

District of Columbia Code

1973 EDITION★

NONCUMULATIVE SUPPLEMENT VI

1979



TITLES 1—49

TABLES AND INDEX

DISTRICT OF COLUMBIA CODE

1973 EDITION

NONCUMULATIVE SUPPLEMENT VI

LAWS—January 19, 1978, to December 31, 1978

NOTES TO DECISIONS—January 1, 1978, to December 31, 1978

Prepared and Published Under Authority of the Council of the District of Columbia by
the Editorial Staff of the Publisher under the supervision of the Committee
on the Judiciary, Gregory E. Mize, Staff Director and Counsel.



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1979

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PREFACE

Consistent with the principles of “home rule” established in the District of Columbia Self Government and Governmental Reorganization Act (Public Law 93-198, 87 Stat. 774), the Congress of the United States divested itself of the responsibility for preparing and publishing the D. C. Code after the publication of the fifth annual supplement to the 1973 edition. By virtue of Public Law 94-386 (D. C. Code, sec. 49-112), the Office of the Law Revision Counsel of the United States House of Representatives closed its books on the D. C. Code on the last day of 1977. At that time, the text of the fifth supplement was completed and the United States Government Printing Office was responsible for its printing and binding. Public Law 94-386 mandated that thereafter future editions of the D. C. Code and supplements thereto would be prepared and published under the supervision of the Council of the District of Columbia.

Pursuant to its mandate, the Council on July 19, 1977 (by Resolution 2-80) established the Advisory Commission on Codification, an appointed panel of local lawyers and a business professional. The Commission convened to provide the Council with background research and a model plan for the preparation and publication of the D. C. Code. The Advisory Commission on Codification worked intensely on this task during the summer of 1977 consulting with Mr. Edward F. Willett, Jr., Law Revision Counsel of the United States House of Representatives, printer-experts from the United States Government Printing Office, and representatives of major legal publishing companies from across the country. On September 22, 1977, the Advisory Commission on Codification filed with the Council an invaluable report which included a “blue print” for future preparation of the D. C. Code, a suggested staffing pattern and budget for accomplishment of the task, and a proposed format for the next new edition of the D. C. Code.

This interim, noncumulative supplement to the 1973 edition of the D. C. Code is an integral part of the proposed plan of the Advisory Commission on Codification for Council preparation and publication of the D. C. Code. A sixth, noncumulative, supplement to the 1973 edition has been published this year in light of three factual premises. First, all consultants to as well as all members of the Advisory Commission on Codification were unanimous in the opinion that any complete new edition of the D. C. Code should be prepared and published by means of computerized magnetic tape technology instead of the anachronistic standing lead type-set method used heretofore. The conversion to a computerized printing process for the D. C. Code will necessarily require more than a year of production time and substantial sums of appropriated money. Second, though the Council has asked, the Congress has, as of the time of this preface going to press, not felt it necessary to provide the staff requested to prepare the text of a much-needed new edition of the D. C. Code. Finally, the Advisory Commission on Codification determined that the District would save approximately \$200,000.00 by publishing a noncumulative supplement instead of a cumulative sixth supplement.

The text for this noncumulative supplement was prepared and printed by the Michie Company under the supervision of the staff of the Committee on the Judiciary of the Council of the District of Columbia. The sixth, noncumulative, supplement is designed to be an interim publication which will afford the public continued access to an annual annotated up-date of the statutes of the District of Columbia. Concurrently this interim publication will afford an amount of time during which personnel, funding resources and production time can be acquired for the future publication of an approved, entirely new edition of the D. C. Code. The indulgence and understanding of the reader is requested for any inconvenience caused by the requirement that the fifth cumulative supplement of the 1973 edition be used in conjunction with this sixth, noncumulative, supplement.

This sixth, noncumulative, supplement contains the additions to and changes in the general and permanent laws relating to or in force in the District of Columbia, enacted during the second session of the Ninety-Fifth Congress by Congress and by the Council of the District of Columbia between January 19, 1978 and December 31, 1978 (except laws applicable in the

District of Columbia by reason of being general and permanent laws of the United States) and annotations to decisions of the courts affecting the respective sections of the Code reported in the period from January 1, 1978 to December 31, 1978. When read in conjunction with the 1973 edition and cumulative supplement V, such annotations are up to date through the following reports:

99 S. Ct. 886; 591 F.2d 1346; 465 F. Supp. 1307; 396 A.2d 951

This interim supplement, together with the 1973 edition and cumulative supplement V hereto, establishes prima facie those laws in effect on December 31, 1978; except, that titles 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 23, and 28, having been enacted into law, establish legal evidence of the law contained in those titles.

Acts of the Council of the District of Columbia enacted on an emergency basis pursuant to section 1-146 (a) of the Code are not reflected in the text of the Code because of their limited duration. However, notes captioned "Emergency Act Amendment" have been set out under various sections to provide a reference to emergency acts that amend or relate to the subject matter of the section.

Acts of the Council, which are municipal regulations enacted in 1978, are not included in the D. C. Code. Such regulatory law is required by D. C. Law 2-153 to be published by the Mayor in the upcoming *D. C. Municipal Regulations*.

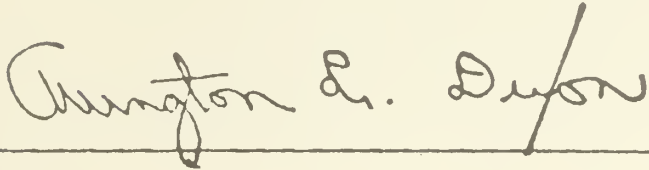
The text of the sections contained in this volume is set out using the exact language of the law from which it was derived with the following exceptions: References to section numbers of laws have been converted to corresponding section numbers of the D. C. Code in all titles except those titles enacted into law, where the corresponding D. C. Code section numbers have been inserted in brackets. References to "this act," etc., have been converted to "this chapter," "this subchapter," etc., as appropriate. Other changes are noted in "Compiler's Changes" notes following the affected section.

"Amendment" notes, "Emergency Act Amendment" notes, "Succession in Government" notes, "Section Referred to in Other Sections" notes and "Cross References" notes have continued to be utilized in the same manner as in the 1973 Edition and Supplement V. Significant changes have been made in the other notes to the several sections of the Code. "Short Title" notes are utilized only where a law has added a new chapter or other grouping of sections which are contiguous. When included, such "Short Title" notes are set out following the first section of such new chapter or grouping. Short titles of acts which amend existing provisions of the Code have not been set out. All acts contained in the Code are included in the "Index of Acts Cited by Popular Name." "Effective Date" notes are utilized only where the effective date of a law or section of a law is different from the final adoption date which is set out in the historical citation following the text of the section of the Code. "Legislative History of Law" notes have been included to enumerate the legislative history of the law which amended, repealed or added the Code section.

Notes to decisions of the courts have been prepared to include annotations from all cases which construe, interpret, modify, clarify, explain or determine the validity or constitutionality of the several sections of the Code. Such notes have been written in as clear and succinct language as possible, and catchlines have been added to facilitate their use. Cases which speak to the sufficiency of the evidence relative to a section of the Code, but which do not construe, interpret, etc., the section, are enumerated following the affected section under the catchlines "Evidence sufficient" or "Evidence insufficient." Cases which cite a section of the Code but which do not construe, interpret, etc., or speak to the sufficiency of the evidence necessary under such section are enumerated under the catchline "Cited in." "Evidence sufficient," "Evidence insufficient" and "Cited in" notes, when appearing, will be the last notes to the affected section. Tables of cases and reverse tables of cases have been prepared in the same forms as those in the 1973 Edition and Supplement V.

This supplement has been prepared and published by the Michie Company under the supervision of Gregory E. Mize, Staff Director and Counsel of the Committee on the Judiciary. Grateful acknowledgment is made of the cooperation by all who have helped in this work,

particularly by the staff on the Committee on the Judiciary, the staff of the Michie Company, and the members of the Advisory Commission on Codification who selflessly devoted their time and their talents to designing a process to prepare and publish the D. C. Code. The members of the Commission were as follows: Harley J. Daniels, Esquire, Chairperson; Marsha Echols, Esquire; J. S. Ellenberger, Esquire; Benny L. Kass, Esquire; Robert Kenney, Esquire; John F. Mercer, Esquire; Gregory E. Mize, Esquire; George Porter, Esquire; John Prescott; John T. Rich, Esquire; Suzanne Richards, Esquire; Peter S. Ridley, Jr., Esquire; Gloria Sulton, Esquire; Edward B. Webb, Jr., Esquire; Dorothy Wilson, Esquire; Peter H. Wolf, Esquire and Nancy Wynstra, Esquire.



/s/

Arrington Dixon
Chairman of the Council of the
District of Columbia

Washington, D.C.
March 20, 1979



/s/

David A. Clarke
Councilmember
Chairperson, Committee on the Judiciary
Council of the District of Columbia

**ACTS RELATING TO THE ESTABLISHMENT OF THE
DISTRICT OF COLUMBIA AND ITS VARIOUS
FORMS OF GOVERNMENTAL
ORGANIZATION**

District of Columbia Self-Government and Governmental Reorganization Act

Title IV—The District Charter

Part A—The Council

Subpart 1—Creation of the Council

POWERS OF THE COUNCIL

Sec. 404.

* * * * *

(e) An act passed by the Council shall be presented by the Chairman of the Council to the Mayor, who shall, within ten calendar days (excluding Saturdays, Sundays, and holidays) after the act is presented to him, either approve or disapprove such act. If the Mayor shall approve such act, he shall indicate the same by affixing his signature thereto, and such act shall become law subject to the provisions of section 602 (c). If the Mayor shall disapprove such act, he shall, within ten calendar days (excluding Saturdays, Sundays, and holidays) after it is presented to him, return such act to the Council setting forth in writing his reasons for such disapproval. If any act so passed shall not be returned to the Council by the Mayor within ten calendar days after it shall have been presented to him, the Mayor shall be deemed to have approved it, and such act shall become law subject to the provisions of section 602 (c) unless the Council by a recess of 10 days or more prevents its return, in which case it shall not become law. If, within thirty calendar days after an act has been timely returned by the Mayor to the Council with his disapproval, two-thirds of the members of the Council present and voting vote to reenact such act, the act so reenacted shall become law subject to the provisions of section 602 (c).

* * * * *

(Amended October 27, 1978, Pub. L. 95-526, 92 Stat. 2023.)

Effect of Amendment. Pub. L. 95-526, 92 Stat. 2023, amended subsection (e) by inserting “unless the Council by a recess of 10 days or more prevents its return, in which case it shall not become law” at the end of the fourth

sentence and by striking all subsection after the word “shall” and inserting “become law subject to the provisions of section 602 (c).”

Subpart 2—Organization and Procedure of the Council

ACTS, RESOLUTIONS, AND REQUIREMENTS FOR QUORUM

Sec. 412. (a) The Council, to discharge the powers and duties imposed herein, shall pass acts and adopt resolutions, upon a vote of a majority of the members of the Council present and voting, unless otherwise provided in this Act or by the Council. The Council shall use acts for all legislative purposes. Each proposed act (other than an act to which section 446 applies) shall be read twice in substantially the same form, with at least thirteen days intervening between each reading. Upon final adoption by the Council each act shall be made immediately available to the public in a manner which the Council shall determine. If the Council determines, by a vote of two-thirds of the members, that emergency circumstances make it necessary that an act be passed after a single reading, or that it take effect immediately upon enactment, such act shall be effective for a period of not to exceed ninety days. Resolutions shall be used to express simple determinations, decisions, or directions of the Council of a special or temporary character.

* * * * *

(Amended October 27, 1978, Pub. L. 95-526, 92 Stat. 2023.)

Effect of Amendment. Pub. L. 95-526, 92 Stat. 2023, amended subsection (a) by adding “(other than an act to which section 446 applies)” after the words “Each proposed act” in the third sentence.

Title VI—Reservation of Congressional Authority
LIMITATIONS ON THE COUNCIL

Sec. 602.

* * * * *

(c) (1) Except acts of the Council which are submitted to the President in accordance with the Budget and Accounting Act, 1921 [31 U.S.C. 1 et seq.], any act which the Council determines according to section 412 (a), should take effect immediately because of emergency circumstances, and acts proposing amendments to title IV of this Act, the Chairman of the Council shall transmit to the Speaker of the House of Representatives, and the President of the Senate a copy of each act passed by the Council and signed by the Mayor, or vetoed by the Mayor and repassed by two-thirds of the Council present and voting each act passed by the Council and allowed to become effective by the Mayor without his signature, and each initiated act and act subject to referendum which has been ratified by a majority of the registered qualified electors voting on the initiative or referendum. Except as provided in paragraph (2), no such act shall take effect until the end of the 30-day period (excluding Saturdays, Sundays, and holidays, and any day on which neither House is in session because of an adjournment sine die, a recess of more than 3 days, or an adjournment of more than 3 days) beginning on the day such act is transmitted by the Chairman to the Speaker of the House of Representatives and the President of the Senate and then only if during such 30-day period both Houses of Congress do not adopt a concurrent resolution disapproving such act. The provisions of section 604, except subsections (d), (e), and (f) of such section, shall apply with respect to any concurrent resolution disapproving any act pursuant to this paragraph.

* * * * *

(Amended October 27, 1978, Pub. L. 95-526, 92 Stat. 2023.)

Effect of Amendment. Pub. L. 95-526, 92 Stat. 2023, amended subsection (c) (1) by striking out “(and with respect to which the President has not sustained the Mayor’s veto)” in the first sentence, by striking out “and every” and inserting “each” in lieu thereof in the first sentence, by adding the last clause to the first sentence and by striking out “either House is not in session” and inserting “neither House is in session because of an adjournment sine die, a recess of more than 3 days, or an adjournment of more than 3 days” in the second sentence.

Initiative, Referendum, and Recall Charter Amendments Act of 1977

D.C. Law 2-46 (As amended by Emergency Act 2-94 and by P.L. 95-526)

In the Council of the District of Columbia, March 10, 1978, to amend the Charter of the District of Columbia to provide for the power of initiative, referendum, and recall.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Initiative, Referendum, and Recall Charter Amendments Act of 1977”.

Sec. 2. Subject to the approval of the registered qualified electors of the District of Columbia, the District of Columbia charter is amended as follows:

“Amendment No. 1—Initiative and Referendum

“Sec. 1. Definitions

“(a) The term ‘initiative’ means the process by which the electors of the District of Columbia may propose laws (except laws appropriating funds) and present such proposed laws directly to the registered qualified electors of the District of Columbia for their approval or disapproval.

“(b) The term ‘referendum’ means the process by which the registered qualified electors of the District of Columbia may suspend acts of the Council of the District of Columbia (except emergency acts, acts levying taxes, or acts appropriating funds for the general operating budget) until such acts have been presented to the registered qualified electors of the District of Columbia for their approval or rejection.

“Sec. 2. Process

“(a) An initiative or referendum may be proposed by the presentation of a petition to the District of Columbia Board of Elections and Ethics containing the signatures of registered qualified electors equal in number to five (5) percent of the registered electors in the District of Columbia: Provided, That the total signatures submitted include five (5) percent of the registered electors in five (5) or more of the City’s Wards. The number of registered electors which is used for computing these requirements shall be according to the latest official count of registered electors by the Board of Elections and Ethics which was issued thirty (30) or more days prior to submission of the signatures for the particular initiative or referendum petition.

“(b) (1) Upon the presentation of a petition for a referendum to the District of Columbia Board of Elections and Ethics as provided in this section, the District of Columbia Board of Elections and Ethics shall notify the appropriate custodian of the act of the Council of the District of Columbia (either the President of the United States or the President of the Senate and the Speaker of the House of Representatives) as provided in sections 404 and 446 of the Home Rule Act and the President of the United States or the President of the Senate and the Speaker of the House of Representatives, shall, as is appropriate, return such act or portion of such act to the Chairman of the Council of the District of Columbia. No further action may be taken upon such act or portion of such act until after a referendum election is held.

“(2) No act is subject to referendum if it has become law according to the provisions of section 404 of the Home Rule Act.

“Sec. 3. The District of Columbia Board of Elections and Ethics shall submit an initiative measure without alteration at the next general, special or primary election held at least ninety (90) days after the measure is received. The District of Columbia Board of Elections and Ethics shall hold an election on a referendum measure within one hundred and fourteen (114) days of its receipt of a petition as provided in section 2 of this act. If a previously scheduled general, primary, or special election will occur between fifty-four (54) and one hundred and fourteen (114) days of its receipt of a petition as provided in section 2 of this act, the District of Columbia Board of Elections and Ethics may present the referendum at that election.

“Sec. 4. If a majority of the registered qualified electors voting on a referred act vote to

disapprove the act, such action shall be deemed a rejection of the act or that portion of the act on the referendum ballot and no action may be taken by the Council of the District of Columbia with regard to the matter presented at referendum for the three hundred and sixty-five (365) days following the date of the District of Columbia Board of Elections and Ethics' certification of the vote concerning the referendum.

“Sec. 5. If a majority of the registered qualified electors voting in a referendum approve an act or adopt legislation by initiative, then the adopted initiative or the act approved by referendum shall be an act of the Council upon the certification of the vote on such initiative or act by the District of Columbia Board of Elections and Ethics, and such act shall become law subject to the provisions of section 602 (c).

“Sec. 6. The District of Columbia Board of Elections and Ethics shall be empowered to propose a short title and summary of the initiative and referendum matter which accurately reflects the intent and meaning of the proposed referendum or initiative. Any citizen may petition the Superior Court of the District of Columbia no later than thirty (30) days prior to the election at which the initiative or referendum will be held for a writ in the nature of mandamus to correct any inaccurate short title and summary by the District of Columbia Board of Elections and Ethics and to mandate that Board to properly state the summary of the initiative or referendum measure.

“Sec. 7. The Council of the District of Columbia shall adopt such acts as are necessary to carry out the purpose of this amendment within one hundred and eighty (180) days of the effective date of this amendment. Neither a petition initiating an initiative nor a referendum may be presented to the District of Columbia Board of Elections and Ethics prior to October 1, 1978.

“Charter Amendment No. 2—Recall of Elected Public Officials

“Sec. 1. The term ‘recall’ means the process by which the qualified electors of the District of Columbia may call for the holding of an election to remove or retain an elected official of the District of Columbia (except the Delegate to Congress for the District of Columbia) prior to the expiration of his or her term.

“Sec. 2. Any elected officer of the District of Columbia government (except the Delegate to Congress for the District of Columbia) may be recalled by the registered electors of the election ward from which he or she was elected or by the registered electors of the District of Columbia at-large in the case of an at-large elected officer, whenever a petition demanding his or her recall, signed by ten (10) percent of the registered electors thereof, is filed with the District of Columbia Board of Elections and Ethics. The ten (10) percent shall be computed from the total number of the registered electors from the ward, according to the latest official count of registered electors by the Board of Elections and Ethics which was issued thirty (30) or more days prior to submission of the signatures for the particular recall petition. In the case of an at-large elected official, the ten (10) percent shall include ten (10) percent of the registered electors in five (5) or more of the City's wards. The District of Columbia Board of Elections and Ethics shall hold an election within one hundred and fourteen (114) days of its receipt of a petition as provided in section 2 of this act. If a previously scheduled general, primary, or special election will occur between fifty-four (54) and one hundred and fourteen (114) days of its receipt of a petition as provided in section 2 of this act, then the District of Columbia Board of Elections and Ethics may present the recall question at that election.

“Sec. 3. The process of recalling an elected official may not be initiated within the first three hundred and sixty-five (365) days nor the last three hundred and sixty-five (365) days of his or her term of office. Nor may the process be initiated within one year after a recall election has been determined in his or her favor.

“Sec. 4. An elected official is removed from office if a majority of the qualified electors voting in the election vote to remove him or her. The vacancy created by such recall shall be filled in

the same manner as other vacancies as provided in sections 401 (d) and 421 (c) (2) of the Home Rule Act and section 10 (a) of the District of Columbia Elections Act.

“Sec. 5. The Council of the District of Columbia shall adopt such acts as are necessary to carry out the purpose of this amendment within one hundred and eighty (180) days of the effective date of this amendment. No petition for recall may be presented to the District of Columbia Board of Elections and Ethics prior to October 1, 1978.”

Sec. 3. This act shall take effect as provided in section 303 of the District of Columbia Self-Government and Governmental Reorganization Act.

Cross reference. For codification of act in the D. C. Code, see §§ 1-181 et seq. and 1-191 et seq.

Concurrent Resolutions to D. C. Law 2-46**95th CONGRESS, 2d Session****H. CON. RES. 464, Calendar No. 615**

[Report No. 95-673]

IN THE SENATE OF THE UNITED STATES**FEBRUARY 28 (legislative day, FEBRUARY 6), 1978**

Referred to the Committee on Governmental Affairs

MARCH 7 (legislative day, FEBRUARY 6), 1978

Reported by Mr. EAGLETON, without amendment

CONCURRENT RESOLUTION

Resolved by the House of Representatives (the Senate concurring), That the Congress approves the action of the District of Columbia Council described as follows: Amendment Numbered 1 (relating to initiative and referendum) to the District of Columbia Charter, as stated in section 2 of the Initiative, Referendum, and Recall Charter Amendments Act of 1977, approved June 14, 1977 (Act 2-46), as amended by the Emergency Amendments to the Initiative, Referendum, and Recall Charter Amendments Act of 1977, approved November 1, 1977 (Act 2-94), and as ratified by a majority of the registered qualified electors of the District of Columbia voting in the referendum held for such ratification on November 8, 1977, such amendment having been submitted to the Congress for its approval on December 2, 1977, pursuant to section 303 of the District of Columbia Self-Government and Governmental Reorganization Act.

Passed the House of Representatives February 27, 1978.

Attest:

EDMUND L. HENSHAW, JR.,

Clerk.

95th CONGRESS, 2d Session

H. CON. RES. 471, Calendar No. 616

[Report No. 95-672]

IN THE SENATE OF THE UNITED STATES

FEBRUARY 28 (legislative day, FEBRUARY 6), 1978

Referred to the Committee on Governmental Affairs

MARCH 7 (legislative day, FEBRUARY 6), 1978

Reported by Mr. EAGLETON, without amendment

CONCURRENT RESOLUTION

Resolved by the House of Representatives (the Senate concurring), That the Congress approves the action of the District of Columbia Council described as follows: Amendment No. 2 (relating to recall of elected officials) to the District of Columbia Charter, as stated in section 2 of the Initiative, Referendum, and Recall Charter Amendments Act of 1977, approved June 14, 1977 (Act 2-46), as amended by the Emergency Amendments to the Initiative, Referendum, and Recall Charter Amendments Act of 1977, approved November 1, 1977 (Act 2-94), and as ratified by a majority of the registered qualified electors of the District of Columbia voting in the referendum held for such ratification on November 8, 1977, such amendment having been submitted to the Congress for its approval on December 2, 1977, pursuant to section 303 of the District of Columbia Self-Government and Governmental Reorganization Act.

Passed the House of Representatives February 27, 1978.

Attest:

EDMUND L. HENSHAW, JR.,

Clerk.

Mayor and Chairman of the Council Transition Emergency Act of 1978

ACT 2-307

In the Council of the District of Columbia, December 4, 1978, 25 DCR 6933, to promote the orderly transfer of the executive power upon expiration of the term of office of a Mayor and the inauguration of a new Mayor, and for other purposes.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Mayor and Chairman of the Council Transition Emergency Act of 1978".

Sec. 2. Purpose of This Act. The purpose of this act is to provide for the orderly transfer of the executive power in connection with the expiration of the term of office of a Mayor and the inauguration of a new Mayor. The act authorizes appropriate actions to be taken to assure continuity in the faithful execution of the laws and in the conduct of the affairs of the government of the District of Columbia.

Sec. 3. Services and Facilities Authorized to be Provided to the Mayor-Elect.

(a) Following upon the certification by the District of Columbia Board of Elections and Ethics of a Mayor-elect of the District of Columbia, the person who is the Mayor-elect of the District of Columbia is authorized to establish an office of transition and appoint a transition staff that shall be entitled to receive necessary and reasonable services and facilities for use in connection with preparations for assumption of official duties as Mayor. The incumbent Mayor is authorized to provide necessary and reasonable services and facilities for use in connection with preparations for assumption of official duties of the Mayor-elect, including:

(1) suitable office space appropriately equipped with furniture, furnishings, office machines and equipment, and office supplies at such place or places within the District of Columbia as the Mayor shall designate;

(2) payment of the compensation of transition office staff at rates not to exceed those prescribed in section 5332 of Title 5, United States Code: PROVIDED, That any employee of a department or agency of the Executive Branch or an employee of the Legislative Branch of the District of Columbia government may be detailed to the transition office on a reimbursable or nonreimbursable basis with the consent of the head of the appropriate department or the agency; and while so detailed such employee shall be responsible only to the Mayor-elect for performance of his duties: PROVIDED FURTHER, That any employee so detailed shall continue to receive the compensation provided pursuant to law for his regular employment, and shall retain the rights and privileges of such employment without interruption. Notwithstanding any other law, persons receiving compensation as members of transition office staff under this subsection, other than detailed employees, shall not be held or considered to be employees of the District government;

(3) payment of expenses for the procurement of services of experts or consultants or organizations thereof for the Mayor-elect, as authorized for the head of any department by section 15 of the Administrative Expenses Act of 1946 (5 U.S.C. 3109), as amended, at rates not to exceed one hundred fifty dollars (\$150) per diem for individuals;

(4) payment of travel expenses and subsistence allowances, including rental of governmental or hired motor vehicles, found necessary by the Mayor-elect, as authorized for persons employed intermittently or for persons serving without compensation by section 5 of the Administrative Expenses Act of 1946 (5 U.S.C. 5703), as amended, as may be appropriate;

(5) communications services found necessary by the Mayor-elect;

(6) payment of expenses for necessary printing and binding;

(7) conveyance of all official mail matter, including airmail, sent by the Mayor-elect in connection with his preparations for the assumption of official duties as Mayor, in accordance with the provisions of the Official Correspondence Regulations (D.C. Law 1-118; D.C. Code, sec. 1-1701 *et seq.*); and

(8) payment of expenses required for the official inaugural ceremony of the Mayor.

(b) No funds for the provision of services and facilities under this act shall be expended in connection with any obligation incurred by the Mayor-elect before the day following the date of the general election held to determine the Mayor, or after the inauguration of the Mayor-elect.

(c) The term "Mayor-elect" as used in this act shall mean such person who is certified as the successful candidate for the office of Mayor by the District of Columbia Board of Elections and Ethics following the general election held to determine the Mayor. The term "incumbent Mayor" or "Mayor" as used in this act shall mean the person who holds the office of Mayor pursuant to section 421 of the District of Columbia Self-Government and Governmental Reorganizational Act (87 Stat. 789; D.C. Code, sec. 1-161) on the date of said general election. The term "Chairman of the Council of the District of Columbia" shall mean the person who holds the office of the Chairman of the Council of the District of Columbia pursuant to section 401 of the District of Columbia Self-Government and Governmental Reorganizational Act (87 Stat. 785; D.C. Code, sec. 1-141) on the date of said general election.

(e) In the event the Mayor-elect is the incumbent Mayor, there shall be no expenditures of funds for the provision of services and facilities to such incumbent under this act, and any funds appropriated for such purposes shall be returned to the general fund of the District government.

Sec. 4. Services and Facilities Authorized to be Provided to the Former Mayor and the Chairman of the Council of the District of Columbia. For a period not to exceed three (3) months from the date of the expiration of his term of office as Mayor, an incumbent Mayor is authorized to receive for use in connection with winding up the affairs of his office, necessary services and facilities of the same general character as authorized by this act to be provided to a Mayor-elect. Any person appointed or detailed to serve a former Mayor under the authority of this section shall be appointed or detailed in accordance with, and shall be subject to, all of the provisions of section 3 of this act applicable to persons appointed or detailed under authority of that section. The provisions of this section shall apply in like manner to a former Chairman of the Council of the District of Columbia.

Sec. 5. Authorizations of Appropriations. There are hereby authorized to be appropriated such funds as may be necessary to carry out the purposes of this act and such funds shall remain available during the fiscal year in which the transition occurs and the next succeeding fiscal year.

Sec. 6. Effective Date. This act shall take effect immediately upon enactment and shall remain in effect for a period not to exceed ninety (90) days, as provided for in section 412(a) of the District of Columbia Self-Government and Governmental Reorganization Act.

Constitution of the United States of America

Proposed Amendment

[Representation of the District of Columbia in Congress]

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States within seven years from the date of its submission by the Congress:

“ARTICLE —

“SECTION 1. For purposes of representation in the Congress, election of the President and Vice President, and article V of this Constitution, the District constituting the seat of government of the United States shall be treated as though it were a State.

“SEC. 2. The exercise of the rights and powers conferred under this article shall be by the people of the District constituting the seat of government, and as shall be provided by the Congress.

“SEC. 3. The twenty-third article of amendment to the Constitution of the United States is hereby repealed.

Historical Note. Proposed by the Ninety-fifth Congress. Passed House March 2, 1978 and passed Senate Aug. 22, 1978. Received by the Office of the Federal Register, National Archives and Records Service, General Services Administration, Aug. 28, 1978.

Sec. 4 of the joint resolution provided: “This article shall be inoperative, unless it shall have been ratified as amendment to the Constitution by the legislatures of three-fourths of the several States within seven years from the date of its submission.”

Equal Rights Amendment Ratification Act of 1978

D. C. LAW 2-79

In the Council of the District of Columbia, June 13, 1978, to endorse ratification of the Equal Rights Amendment (ERA) so that no person shall be denied equality of rights under the law on account of sex.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "District of Columbia Equal Rights Amendment (ERA) Ratification Act of 1978".

Sec. 2. The Council of the District of Columbia finds that:

(a) Women have been second class citizens legally and economically as a result of laws which bestow privileges, responsibilities, or benefits to one sex and not the other.

(b) Women are generally paid less than men for comparable work, or are underemployed relative to their abilities. The median salary for full-time female workers is currently about three thousand dollars (\$3,000) less per year than for men.

(c) Women represent fifty-one (51) percent of the population and forty-three (43) percent of the labor force, yet only eighteen (18) percent of professionals (doctors, lawyers, and judges) are women.

(d) Women are discriminated against in obtaining credit, signing mortgages, and executing contracts.

Sec. 3. (a) The Equal Rights Amendment (ERA), introduced over 50 years ago, will help assure enforcement of equal rights for all persons regardless of sex.

(b) Only thirty-five (35) states have thus far ratified the Equal Rights Amendment (ERA). States which have not ratified the Equal Rights Amendment (ERA) are: Alabama, Arizona, Arkansas, Florida, Georgia, Illinois, Louisiana, Mississippi, Missouri, Nevada, North Carolina, Oklahoma, South Carolina, Utah, and Virginia.

(c) The Equal Rights Amendment (ERA) must be ratified by three (3) more states in order to have a total of thirty-eight (38) by March 22, 1979 or it will be legislatively dormant for two (2) years before the ratification process begins again.

(d) As of November 1977, legislation has been introduced in Congress to extend the ratification date for the Equal Rights Amendment (ERA) from March 1979 to March 1986.

Sec. 4. (a) The Council recognizes that formal ratification of the Equal Rights Amendment (ERA) by the District of Columbia is not possible in the Constitutional sense, but strongly believes in equal rights for all citizens. Therefore, the term "ratify" as employed herein, conforms to standard dictionary usage as "to approve or confirm; especially to give official sanction."

(b) The Council of the District of Columbia considers the Equal Rights Amendment (ERA) socially, economically, and politically viable and is concerned that the seven (7) year time limit for ratification of the Equal Rights Amendment (ERA) will restrict full consideration of the amendment by those states which have not ratified the amendment, thereby blocking its passage.

(c) Considering the time limit for ratification of the Equal Rights Amendment (ERA) and the pending resolution for an extension of that time limit, the Council of the District of Columbia, in its ratification act, would like to lead the way for additional states to consider and ratify the Equal Rights Amendment (ERA).

Sec. 5. The Council of the District of Columbia fully and unequivocally ratifies the Equal Rights Amendment (ERA) which provides that: "Equality of rights under the law shall not be denied or abridged by the United States or by any state on account of sex."

Sec. 6. This act shall take effect following the period provided for Congressional review of the acts of the Council of the District of Columbia in section 602 (c) (1) of the District of Columbia Self-Government and Governmental Reorganization Act.

Emergency Act Amendments.

1978 — For temporary enactment of the “Emergency Equal Rights Amendment Convention Boycott Act of 1978,” see the “Emergency Equal Rights Amendment Convention Boycott Act of 1978” (D.C. Act 2-150, Feb. 13, 1978, 24 DCR 7070.)

For temporary equal rights endorsement, see the “District of Columbia Equal Rights Amendment Emergency Ratification Act of 1978 (D.C. Act 2-151, Feb. 13, 1978, 24 DCR 7073.)

DISTRICT OF COLUMBIA CODE
1973 Edition

NONCUMULATIVE SUPPLEMENT VI

LAWS—January 19, 1978, to December 31, 1978

NOTES TO DECISIONS—January 1, 1978, to December 31, 1978

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TITLE 4—POLICE AND FIRE DEPARTMENTS.
TITLE 5—BUILDING RESTRICTIONS AND REGULATIONS.
TITLE 6—HEALTH AND SAFETY.
TITLE 7—HIGHWAYS, STREETS, BRIDGES.
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Subchapter I.—General Provisions.

§ 1-121. Purposes.

NOTES TO DECISIONS

Core and primary purpose of home rule statute is to essentially local matters to the greatest extent possible.
relieve Congress of the burden of legislating upon McIntosh v. Washington (D.C. 1978, 395 A.2d 744).

§ 1-124. Legislative power.

Section referred to in section. 47-3301.

NOTES TO DECISIONS

Cited in *McIntosh v. Washington* (D.C. 1978, 395 A.2d 744).

§ 1-127. Congressional action on certain District matters.

Section referred to in section. 1-147.

§ 1-128. Construction.

NOTES TO DECISIONS

Weapons regulation not inconsistent with Act. — rule statute. *McIntosh v. Washington* (D.C. 1978, 395 A.2d 744).
Section 1-227 concerning regulations relative to firearms, explosives and weapons is not inconsistent with the home

Subchapter II.—Succession in Government

§ 1-131. Abolishment of existing government.

NOTES TO DECISIONS

Cited in *Bethel v. Jefferson* (1978, 589 F.2d 631); *In re Knable* (1977, 570 F.2d 957, 187 U.S. App. D.C. 48).

Subchapter III.—Council

§ 1-141. Creation — Membership — Personnel — Vacancies.

Section referred to in sections. 1-194, 2-942, 45-1681, 47-3301.

NOTES TO DECISIONS

Terms of office are staggered to ensure smooth transitions in administration. *Barry v. District of Columbia Bd. of Elections & Ethics* (448 F. Supp. 1249, appeal dismissed for lack of standing, 1978, 580 F.2d 695, 188 U.S. App. D.C. 432).

§ 1-144. Powers.

* * * * *

(e) An act passed by the Council shall be presented by the Chairman of the Council to the Mayor, who shall, within ten calendar days (excluding Saturdays, Sundays, and holidays) after the act is presented to him, either approve or disapprove such act. If the Mayor shall approve such act, he shall indicate the same by affixing his signature thereto, and such act shall become law subject to the provisions of section 1-147 (c). If the Mayor shall disapprove such act, he shall, within ten calendar days (excluding Saturdays, Sundays, and holidays) after it is presented to him, return such act to the Council setting forth in writing his reasons for such disapproval. If any act so passed shall not be returned to the Council by the Mayor within ten calendar days after it shall have been presented to him, the Mayor shall be deemed to have approved it, and such act shall become law subject to the provisions of section 1-147 (c) unless the Council by

a recess of 10 days or more prevents its return, in which case it shall not become law. If, within thirty calendar days after an act has been timely returned by the Mayor to the Council with his disapproval, two-thirds of the members of the Council present and voting vote to reenact such act, the act so reenacted shall become law subject to the provisions of section 1-147 (c).

* * * * *

(As amended Oct. 27, 1978, Pub. L. 95-526, 92 Stat. 2023.)

Effect of Amendment.
1978 — Pub. L. 95-526, 92 Stat. 2023, amended subsection (e) by inserting “unless the Council by a recess of 10 days or more prevents its return, in which case it shall not become law” at the end of the fourth sentence

and by striking all of the subsection after the word “shall” and inserting “become law subject to the provisions of section 1-147 (c).”
Section referred to in section. 1-182.

NOTES TO DECISIONS

Subsection (a) distinguishes between transferred legislative power and newly conferred legislative power.
McIntosh v. Washington (D.C. 1978, 395 A.2d 744).
Proper exercises of power. — Legislative power transferred from the predecessor District of Columbia Council to the new Council by the home rule statute necessarily included the function of enacting police regulations pursuant to § 1-226 and gun control measures pursuant to § 1-227. *McIntosh v. Washington* (D.C. 1978, 395 A.2d 744).
The validity of the firearms control statute (§ 6-1801 et seq.) can be sustained under the District of Columbia

Council’s newly conferred power set forth in subsection (a) of this section notwithstanding the limitation on such power contained in § 1-147(a)(9), relating to any provision of any law codified in Title 22, since that limitation is merely a time constraint on the Council’s authority to make changes, modifications or amendments in local criminal statutes until such time as a local law revision commission could make a complete reevaluation and revision of the District’s criminal code. *McIntosh v. Washington* (D.C. 1978, 395 A.2d 744).

§ 1-146. Acts — Resolutions — Requirements for quorum.

(a) The Council, to discharge the powers and duties imposed herein, shall pass acts and adopt resolutions, upon a vote of a majority of the members of the Council present and voting, unless otherwise provided in this Act or by the Council. The Council shall use acts for all legislative purposes. Each proposed act (other than an act to which section 47-224 applies) shall be read twice in substantially the same form, with at least thirteen days intervening between each reading. Upon final adoption by the Council each act shall be made immediately available to the public in a manner which the Council shall determine. If the Council determines, by a vote of two-thirds of the members, that emergency circumstances make it necessary that an act be passed after a single reading, or that it take effect immediately upon enactment, such act shall be effective for a period of not to exceed ninety days. Resolutions shall be used to express simple determinations, decisions, or directions of the Council of a special or temporary character.

* * * * *

(As amended Oct. 27, 1978, Pub. L. 95-526, 92 Stat. 2023.)

Effect of Amendment.
1978 — Pub. L. 95-526, 92 Stat. 2023, amended subsection (a) by inserting “(other than an act to which

section 47-224 applies)” after the words “Each proposed act” in the third sentence.
Section referred to in section. 1-147.

§ 1-147. Limitations.

* * * * *

(c) (1) Except acts of the Council which are submitted to the President in accordance with the Budget and Accounting Act, 1921 (31 U.S.C. 1 et seq.) any act which the Council determines according to section 1-146 (a), should take effect immediately because of emergency circumstances, and acts proposing amendments to title IV of this chapter, the Chairman of the Council shall transmit to the Speaker of the House of Representatives, and the President of the Senate a copy of each act passed by the Council and signed by the Mayor, or vetoed by the Mayor and repassed by two-thirds of the Council present and voting, each act passed by the Council and allowed to become effective by the Mayor without his signature, and each initiated act and

act subject to referendum which has been ratified by a majority of the registered qualified electors voting on the initiative or referendum. Except as provided in paragraph (2), no such act shall take effect until the end of the 30-day period (excluding Saturdays, Sundays, and holidays, and any day on which neither House is in session because of an adjournment sine die, a recess of more than 3 days, or an adjournment of more than 3 days) beginning on the day such act is transmitted by the Chairman to the Speaker of the House of Representatives and the President of the Senate and then only if during such 30-day period both Houses of Congress do not adopt a concurrent resolution disapproving such act. The provisions of section 1-127, except subsections (d), (e), and (f) of such section, shall apply with respect to any concurrent resolution disapproving any act pursuant to this paragraph.

(2) In the case of any such act transmitted by the Chairman with respect to any act codified in titles 22, 23, or 24, such act shall take effect at the end of the 30-day period beginning on the day such act is transmitted by the Chairman to the Speaker of the House of Representatives and the President of the Senate only if during such 30-day period one House of Congress does not adopt a resolution disapproving such act. The provisions of section 1-127 relating to an expedited procedure for consideration of resolutions, shall apply to a simple resolution disapproving such act as specified in this paragraph.

(As amended Oct. 27, 1978, Pub. L. 95-526, 92 Stat. 2023.)

Effect of Amendment.

1978 — Pub. L. 95-526, 92 Stat. 2023, amended subsection (c) (1) by striking out “(and with respect to which the President has not sustained the Mayor’s veto)” and “and every” and inserting “each” and by adding the last clause to the first sentence and by striking out “either

House is not in session” and inserting “neither House is in session because of an adjournment sine die, a recess of more than 3 days, or an adjournment of more than 3 days” in the second sentence.

Section referred to in sections. 1-144, 1-185, 47-3302.

NOTES TO DECISIONS

Congressional intent behind subsection (a)(9) was to reserve to Congress an interest in changing the criminal code for purposes of clarification and improvement and to declare a moratorium on the Council’s new legislative authority while the District of Columbia Law Revision Commission proposed and Congress considered a complete revision of the District of Columbia Criminal Code. *McIntosh v. Washington* (D.C. 1978, 395 A.2d 744).

Limitation did not extend to subject matter. — The phrase “with respect to any provision of any law codified in Title 22” in subsection (a)(9) does not mean with respect to the subject matter of any provision of Title 22. *McIntosh v. Washington* (D.C. 1978, 395 A.2d 744).

Nor restrict local police power. — Congress did not intend the limitation in subsection (a)(9) to restrict the Council’s authority to enact municipal ordinances and local police and regulatory schemes. *McIntosh v. Washington* (D.C. 1978, 395 A.2d 744).

The legislative history does not suggest that in enacting this section Congress intended to deter enactment of a gun

control measure or of other similar exercises of police power in accordance with past local legislative practices. *McIntosh v. Washington* (D.C. 1978, 395 A.2d 744).

Firearms control law sustained. — The validity of the Firearms Control Regulations Act of 1975 (§ 6-1801 et seq.) was sustained under the District of Columbia Council’s newly conferred power set forth in § 1-144(a), notwithstanding the limitation in subsection (a)(9) of this section. *McIntosh v. Washington* (D.C. 1978, 395 A.2d 744).

Subsection (c)(2) differs from subsection (c)(1) in that only one House’s disapproving resolution is necessary to prevent an enactment on the subject matter of the Code sections designated in subsection (c)(2) from becoming effective law. *McIntosh v. Washington* (D.C. 1978, 395 A.2d 744).

Cited in *Barry v. District of Columbia Bd. of Elections & Ethics* (1978, 580 F.2d 695, 188 U.S. App. D.C. 432).

Subchapter IV.—Mayor

§ 1-161. Election — Qualifications — Vacancy — Compensation.

Section referred to in sections. 2-942, 32-342, 45-1681, 47-3101, 47-3301.

NOTES TO DECISIONS

Cited in *Bethel v. Jefferson* (1978, 589 F.2d 631); *In re Knable* (1977, 570 F.2d 957, 187 U.S. App. D.C. 48); *Barry v. District of Columbia Bd. of Elections & Ethics* (1978, 448 F. Supp. 1249).

Subchapter V.—Miscellaneous

§ 1-171. Advisory Neighborhood Commissions.

NOTES TO DECISIONS

Statutory scheme is designed to assure effective presentation of neighborhood views through the instrumentality of the Advisory Neighborhood

Commission. *Wheeler v. District of Columbia Bd. of Zoning Adjustment* (D.C. 1978, 395 A.2d 85).

§ 1-171e. Elections for members of Advisory Neighborhood Commissions — Term of office — Vacancies — Change of residency by member — Resignation and removal of members.

Emergency Act Amendments.

1978 — For temporary addition of subsection (h), see sec. 2 of the Emergency Advisory Neighborhood Commissions Election Act of 1978 (D.C. Act 2-169, Mar. 31, 1978, 24 DCR 9259); sec. 2 of the Technical Amendments

to the Emergency Advisory Neighborhood Commissions Election Act of 1978 Emergency Act (D.C. Act 2-194, May 11, 1978, 24 DCR 380); and sec. 2 of the Second Emergency Advisory Neighborhood Commissions Election Act of 1978 (D.C. Act 2-240, July 21, 1978, 25 DCR 1983).

§ 1-171i. Duties and responsibilities of Advisory Neighborhood Commissions.

NOTES TO DECISIONS

Intent of “great weight” provision was to assure that neighborhood views, expressed through the Advisory Neighborhood Commissions, would receive specific attention by government agencies. *Wheeler v. District of Columbia Bd. of Zoning Adjustment* (D.C. 1978, 395 A.2d 85).

This section is a statutory method of forcing an agency to come to grips with the Advisory Neighborhood Commission’s view — to deal with it in detail. *Wheeler v. District of Columbia Bd. of Zoning Adjustment* (D.C. 1978, 395 A.2d 85).

“Great weight” requirement in subsection (d) means that an agency must elaborate with precision its response to the Advisory Neighborhood Commission’s issues and concerns and deal with them in detail; the agency must articulate why the particular ANC itself, given its vantage point, does or does not offer persuasive advice under the circumstances. *Wheeler v. District of Columbia Bd. of Zoning Adjustment* (D.C. 1978, 395 A.2d 85).

“Great weight” implies explicit reference to each Advisory Neighborhood Commission issue and concern as such, as well as specific findings and conclusions with respect to each. *Wheeler v. District of Columbia Bd. of Zoning Adjustment* (D.C. 1978, 395 A.2d 85).

Effect of *Kopff* case on prior agency decisions. — For cases in which an administrative determination was made prior to *Kopff v. District of Columbia Alcoholic Beverage Control Bd.* (D.C. 1977, 381 A.2d 1372), if the record reveals that the agency was cognizant of and paid attention to the pertinent and specific neighborhood issues and concerns raised by the Advisory Neighborhood Commissions, then the court will not reverse merely because the decision does not satisfy the specific prescriptions of *Kopff*. *Wheeler v. District of Columbia Bd. of Zoning Adjustment* (D.C. 1978, 395 A.2d 85).

Subchapter VI.—Initiative and Referendum

§ 1-181. Definitions.

(a) The term “initiative” means the process by which the electors of the District of Columbia may propose laws (except laws appropriating funds) and present such proposed laws directly to the registered qualified electors of the District of Columbia for their approval or disapproval.

(b) The term “referendum” means the process by which the registered qualified electors of the District of Columbia may suspend acts of the Council of the District of Columbia (except emergency acts, acts levying taxes, or acts appropriating funds for the general operation budget) until such acts have been presented to the registered qualified electors of the District of Columbia for their approval or rejection. (Mar. 10, 1978, D.C. Law 2-46, § 2, 24 DCR 199.)

Legislative History of Law 2-24. Law 2-46 was introduced in Council and assigned Bill No. 2-2, which was referred to the Committee on Government Operations. The Bill was adopted on first, amended first, and second readings on April 5, 1977, May 3, 1977 and May 17, 1977,

respectively. Signed by the Mayor on June 14, 1977, it was assigned Act No. 2-46 and transmitted to both Houses of Congress for its review. Concurrent Resolutions 471 and 464 were approved by both Houses of Congress as required by the act.

§ 1-182. Process.

(a) An initiative or referendum may be proposed by the presentation of a petition to the District of Columbia Board of Elections and Ethics containing the signatures of registered qualified electors equal to number to five (5) percent of the registered electors in the District of Columbia: Provided, that the total signatures submitted include (5) percent of the registered electors in five (5) or more of the City's wards. The number of registered electors which is used for computing these requirements shall be according to the latest official count of registered electors by the Board of Elections and Ethics which was issued thirty (30) or more days prior to submission of the signatures for the particular initiative or referendum petition.

(b) (1) Upon the presentation of a petition for a referendum to the District of Columbia Board of Elections and Ethics as provided in this section, the District of Columbia Board of Elections and Ethics shall notify the appropriate custodian of the act of the Council of the District of Columbia (either the President of the United States or the President of the Senate and the Speaker of the House of Representatives) as provided in sections 1-144 and 47-224 and the President of the United States or the President of the Senate and the Speaker of the House of Representatives shall, as is appropriate, return such act or portion of such act to the Chairman of the Council of the District of Columbia. No further action may be taken upon such act or portion of such act until after a referendum election is held.

(2) No act is subject to referendum if it has become law according to the provisions of section 1-144.

(Mar. 10, 1978, D.C. Law 2-46, § 2, 24 DCR 199.)

Emergency Act Amendment.

1978 — For temporary amendment of subsection (a), see sec. 2 of the Extension of the Emergency Amendments to the Initiative, Referendum, and Recall Charter

Amendments Act of 1977 (D.C. Act 2-140, Jan. 30, 1978, 24 DCR 6851).

Legislative History of Law 2-46. See note to § 1-181. Section referred to in sections. 1-183, 1-192.

§ 1-183. Submission of measure at election.

The District of Columbia Board of Elections and Ethics shall submit an initiative measure without alteration at the next general, special or primary election held at least ninety (90) days after the measure is received. The District of Columbia Board of Elections and Ethics shall hold an election on a referendum measure within one hundred and fourteen (114) days of its receipt of a petition as provided in section 1-182. If a previously scheduled general, primary, or special election will occur between fifty-four (54) and one hundred and fourteen (114) days of its receipt of a petition as provided in section 1-182, the District of Columbia Board of Elections and Ethics may present the referendum at that election. (Mar. 10, 1978, D.C. Law 2-46, § 2, 24 DCR 199.)

Legislative History of Law 2-46. See note to § 1-181.

§ 1-184. Rejection of measure.

If a majority of the registered qualified electors voting on a referred act vote to disapprove the act, such action shall be deemed a rejection of the act or that portion of the act on the referendum ballot and no action may be taken by the Council of the District of Columbia with regard to the matter presented at referendum for the three hundred and sixty-five (365) days following the date of the District of Columbia Board of Elections and Ethics' certification of the vote concerning the referendum. (Mar. 10, 1978, D.C. Law 2-46, § 2, 24 DCR 199.)

Legislative History of Law 2-46. See note to § 1-181.

§ 1-185. Approval of measure.

If a majority of the registered qualified electors voting in a referendum approve an act or adopt legislation by initiative, then the adopted initiative or the act approved by referendum shall be an act of the Council upon the certification of the vote on such initiative or act by the District

of Columbia Board of Elections and Ethics, and such act shall become law subject to the provisions of section 1-147 (c). (Mar. 10, 1978, D.C. Law 2-46, § 2, 24 DCR 199; as amended Oct. 27, 1978, Pub. L. 95-526, 92 Stat. 2023.)

Effect of Amendment.
1978 — Act Oct. 27, 1978, Pub. L. 95-526, amended section generally.

Legislative History of Law 2-46. See note to § 1-181.

§ 1-186. Short title and summary.

The District of Columbia Board of Elections and Ethics shall be empowered to propose a short title and summary of the initiative and referendum matter which accurately reflects the intent and meaning of the proposed referendum or initiative. Any citizen may petition the Superior Court of the District of Columbia no later than thirty (30) days prior to the election at which the initiative or referendum will be held for a writ in the nature of mandamus to correct any inaccurate short title and summary by the District of Columbia Board of Elections and Ethics and to mandate that Board to properly state the summary of the initiative or referendum measure. (Mar. 10, 1978, D.C. Law 2-46, § 2, 24 DCR 199; as amended October 27, 1978, Pub. L. 95-526, 92 Stat. 2023.)

Effect of Amendment.
1978 — Act Oct. 27, 1978, Pub. L. 95-526, amended D.C. Law 2-46 by deleting section 6 of amendment number 1 and renumbering former section 7 of amendment number 1.

Legislative History of Law 2-46. See note to § 1-181.

§ 1-187. Adoption of acts to carry out subchapter.

The Council of the District of Columbia shall adopt such acts as are necessary to carry out the purpose of this subchapter within one hundred and eighty (180) days of the effective date of this subchapter. Neither a petition initiating an initiative nor a referendum may be presented to the District of Columbia Board of Elections and Ethics prior to October 1, 1978. (Mar. 10, 1978, D.C. Law 2-46, § 2, 24 DCR 199; as amended October 27, 1978, Pub. L. 95-526, 92 Stat. 2023.)

Effect of Amendment.
1978 — Act Oct. 27, 1978, Pub. L. 95-526, amended D.C. Law 2-46 by renumbering former section 7 of amendment

number 1 as section 6 and renumbering former section 8 as section 7.
Legislative History of Law 2-46. See note to § 1-181.

Subchapter VII.—Recall of Elected Public Officials

§ 1-191. “Recall” defined.

The term “recall” means the process by which the qualified electors of the District of Columbia may call for the holding of an election to remove or retain an elected official of the District of Columbia (except the Delegate to Congress for the District of Columbia) prior to the expiration of his or her term. (Mar. 10, 1978, D.C. Law 2-46, § 2, 24 DCR 199.)

Legislative History of Law 2-46. See note to § 1-181.

§ 1-192. Process.

Any elected officer of the District of Columbia government (except the Delegate to Congress for the District of Columbia) may be recalled by the registered electors of the election ward from which he or she was elected or by the registered electors of the District of Columbia at-large in the case of an at-large elected officer, whenever a petition demanding his or her recall, signed by ten (10) percent of the registered electors thereof, is filed with the District of Columbia Board of Elections and Ethics. The ten (10) percent shall be computed from the total number of the registered electors from the ward, according to the latest official count of registered electors by the Board of Elections and Ethics which was issued thirty (30) or more days prior to

submission of the signatures for the particular recall petition. In the case of an at-large elected official, the ten (10) percent shall include ten (10) percent of the registered electors in five (5) or more of the City’s wards. The District of Columbia Board of Elections and Ethics shall hold an election within one hundred and fourteen (114) days of its receipt of a petition as provided in section 1-182. If a previously scheduled general, primary, or special election will occur between fifty-four (54) and one hundred and fourteen (114) days of its receipt of a petition as provided in section 1-182, then the District of Columbia Board of Elections and Ethics may present the recall question at that election. (Mar. 10, 1978, D.C. Law 2-46, § 2, 24 DCR 199.)

Emergency Act Amendment.
1978 — For temporary amendment of section, see sec. 2 of the Extension of the Emergency Amendments to the

Initiative, Referendum, and Recall Charter Amendments Act of 1977 (D.C. Act 2-140, Jan. 30, 1978, 24 DCR 6851).
Legislative History of Law 2-46. See note to § 1-181.

§ 1-193. Time limits on initiation of process.

The process of recalling an elected official may not be initiated within the first three hundred and sixty-five (365) days nor the last three hundred and sixty-five (365) days of his or her term of office. Nor may the process be initiated within one year after a recall election has been determined in his or her favor. (Mar. 10, 1978, D.C. Law 2-46, § 2, 24 DCR 199.)

Legislative History of Law 2-46. See note to § 1-181.

§ 1-194. When official removed — Filling of vacancies.

An elected official is removed from office if a majority of the qualified electors voting in the election vote to remove him or her. The vacancy created by such recall shall be filled in the same manner as other vacancies as provided in sections 1-141 (d) and 1-161 (c) (2) of the Home Rule Act and section 1-1110 (a). (Mar. 10, 1978, D.C. Law 2-46, § 2, 24 DCR 199.)

Legislative History of Law 2-46. See note to § 1-181.
Compiler’s note. — The reference to “Home Rule Act,” presumably, refers to the District of Columbia

Self-Government and Governmental Reorganization Act, Public Law 93-198.

§ 1-195. Adoption of acts to carry out subchapter.

The Council of the District of Columbia shall adopt such acts as are necessary to carry out the purpose of this amendment within one hundred and eighty (180) days of the effective date of this subchapter. No petition for recall may be presented to the District of Columbia Board of Elections and Ethics prior to October 1, 1978. (Mar. 10, 1978, D.C. Law 2-46, § 2, 24 DCR 199.)

Legislative History of Law 2-46. See note to § 1-181.

CHAPTER 2.—MAYOR, COUNCIL, AND OTHER OFFICERS

Sec.
1-262a. Official expenses.

§ 1-224. Police regulations authorized in certain cases.

New implementing regulations. Pursuant to this section the following new regulations were adopted in 1978: the “District of Columbia Noise Control Act of 1977” (D.C. Law 2-53, Mar. 16, 1978, 24 DCR 5293) and the

“Vendors Regulation Amendments Act of 1978” (D.C. Law 2-82, June 30, 1978, 24 DCR 9293). These regulations are scheduled to be published by the Mayor in a compilation of all current District of Columbia municipal regulations.

§ 1-226. Regulations for protection of life, health, and property.

New implementing regulations. Pursuant to this section the following new regulations were adopted in 1978: the “Elimination of the Chest X-Ray Requirement

Act of 1977” (D.C. Law 2-39, Feb. 2, 1978, 24 DCR 3175); the “Water Quality Standard Approval Act of 1977” (D.C. Law 2-68, Apr. 6, 1978, 24 DCR 6809); the “Fire Lanes and

Fire Hydrants Act of 1977” (D.C. Law 2-90, June 30, 1978, 24 DCR 9759); the “Amended Eligibility Requirements for AFDC by Reason of the Employment of the Father Act of 1978” (D.C. Law 2-97, Aug. 12, 1978, 25 DCR 392); the “District of Columbia Child Development Facilities Regulation Amendment Act of 1978” (D.C. Law 2-98, Aug. 17, 1978, 25 DCR 245); the “Fire Safety Act of 1978” (D.C. Law 2-99, Aug. 17, 1978, 25 DCR 252); and the “Standards of Assistance Relating to Persons Residing in Community Residence Facilities Act of 1978” (D.C. Law 2-108, Sept. 22, 1978, 25 DCR 1453). These regulations are scheduled to be published by the Mayor in a compilation of all current District of Columbia municipal regulations.

NOTES TO DECISIONS

Authority confirmed. — Legislative power transferred from the predecessor District of Columbia Council to the new Council by the home rule statute necessarily included the function of enacting police regulations pursuant to this section and gun control measures pursuant to § 1-227. *McIntosh v. Washington* (D.C. 1978, 395 A.2d 744).

In enacting § 1-147 (a) (9), which limits the authority of the District of Columbia Council to enact certain criminal legislation, Congress did not intend to restrict the Council’s authority to enact municipal ordinances and local police and regulatory schemes. *McIntosh v. Washington* (D.C. 1978, 395 A.2d 744).

§ 1-227. Regulations relative to firearms, explosives, and weapons.

NOTES TO DECISIONS

Section is not inconsistent with home rule statute. *McIntosh v. Washington* (D.C. 1978, 395 A.2d 744).

Authority confirmed. — Legislative power transferred from the predecessor District of Columbia Council to the new Council by the home rule statute necessarily included the function of enacting police regulations pursuant to § 1-226 and gun control measures pursuant to this section. *McIntosh v. Washington* (D.C. 1978, 395 A.2d 744).

In enacting § 1-147 (a) (9), which limits the authority of the District of Columbia Council to enact certain criminal

legislation, Congress did not intend to restrict the Council’s authority to enact municipal ordinances and local police and regulatory schemes. *McIntosh v. Washington* (D.C. 1978, 395 A.2d 744).

Firearms control law valid. — The Firearms Control Regulations Act (§ 6-1801 et seq.) constitutes a legitimate exercise of the authority vested in the District of Columbia Council by this section. *McIntosh v. Washington* (D.C. 1978, 395 A.2d 744).

§ 1-262a. Official expenses.

The Mayor of the District of Columbia, the Chairman and Members of the Council of the District of Columbia, the Superintendent of Schools, and the Chief Executive Officer of the University of the District of Columbia are each hereby authorized to provide for the expenditure, within the limits of specified annual appropriation, of funds for appropriate purposes related to their official capacity as they may respectively deem necessary. Their determination thereof shall be final and conclusive, and their certificate shall be sufficient voucher for the expenditure of appropriations made pursuant to this section. (Oct. 26, 1973, Pub. L. 93-140, § 26, 87 Stat. 509; Sept. 23, 1978, D.C. Law 2-111, § 2, 25 DCR 1462.)

Effect of Amendment.
1978 — Act Sept. 23, 1978, D.C. Law 2-111, amended section by rewriting the first sentence.

Emergency Act Amendment.
1978 — For temporary amendment of first sentence of section, see sec. 2 of the Official Purposes Funds Emergency Act of 1978 (D.C. Act 2-201, June 7, 1978, 24 DCR 390).

Legislative History of Law 2-111. Law 2-111 was introduced in Council and assigned Bill No. 2-334, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 13, 1978 and June 27, 1978, respectively. Signed by the Mayor on July 17, 1978, it was assigned Act No. 2-232 and transmitted to both Houses of Congress for its review.

CHAPTER 2A.—DELEGATE TO THE HOUSE OF REPRESENTATIVES

§ 1-291. Delegate to the House of Representatives from the District of Columbia.

NOTES TO DECISIONS

Cited in *Barry v. District of Columbia Bd. of Elections & Ethics* (1978, 448 F. Supp. 1249).

CHAPTER 3.—OFFICERS AND EMPLOYEES GENERALLY

§ 1-301. Corporation counsel — Duties.

NOTES TO DECISIONS

Cited in *In re Kossow* (D.C. 1978, 393 A.2d 97).

CHAPTER 8.—CONTRACTS

Subchapter I.—General Provisions

§ 1-808. Advertisement for proposals for purchases and contracts for supplies or services; application to sales and contracts to sell.

Section referred to in section. 32-1351.

CHAPTER 9.—CLAIMS AGAINST DISTRICT

§ 1-902. Settlement of claims and suits against the District of Columbia — Cases that may be settled — Defenses.

Robert J. Pierce. Pursuant to the authority of this section, D.C. Law 2-106, Sept. 13, 1978, 25 DCR 1383, was enacted to read as follows:

“IN THE COUNCIL OF THE DISTRICT OF COLUMBIA, *September 13, 1978*, to render payment to Robert J. Pierce for injuries which he received during the March 9, 1977, terrorist takeover of the District Building.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the ‘Robert J. Pierce Act of 1978.’

Sec. 2. The Mayor of the District of Columbia is hereby authorized and directed to pay, pursuant to appropriate appropriations, out of the general fund of the District of Columbia, to Robert J. Pierce of the District of Columbia, a sum not to exceed \$480,000.

(a) The payment of such sum shall be in full satisfaction of all claims against the District of Columbia, its employees and agents by Robert J. Pierce, his heirs, executors, administrators and assigns arising out of the personal injuries sustained by him, due to extraordinary circumstances, on March 9, 1977.

(b) Robert J. Pierce was injured, while serving as a volunteer law student intern to the Council of the District of Columbia, during the terrorist takeover of the District Building. Such injuries left him partially paralyzed and permanently disabled.

(c) The receipt of any funds awarded pursuant to this act shall be disregarded in determining the eligibility and financial status of Robert J. Pierce for any public medical or rehabilitative services of the District of Columbia for which he would otherwise be entitled.

Sec. 3. Payment authorized by this legislation shall be in addition to services or benefits payment under the Federal Employees Health Benefits Program.

Sec. 4. (a) No part of the payment made pursuant to this act in excess of ten per centum (10%) thereof shall be paid or delivered to or received by any agent or attorney for services rendered in connection with all claims against the District of Columbia described above. It shall be unlawful to exceed that per centum ceiling, any contract to the contrary notwithstanding.

(b) Any person violating the provisions of this act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined any sum not exceeding one thousand dollars (\$1,000).

Sec. 5. This act shall take effect as provided for acts of the Council of the District of Columbia in section 602 (c) (1) of the District of Columbia Self-Government and Governmental Reorganization Act.”

Non-Liability of District Employees

§ 1-921. Definitions.

NOTES TO DECISIONS

Cited in *Bates v. Harp* (1978, 573 F.2d 930).

CHAPTER 10.—NATIONAL CAPITAL PLANNING COMMISSION

§ 1-1002. The Commission — Composition — Functions.

NOTES TO DECISIONS

Authority to adopt a new comprehensive plan is vested jointly in the District of Columbia (as to local elements of the plan) and the National Capital Planning Commission (as to federal elements of the plan). *Citizens Ass’n v. Zoning Comm’n* (D.C. 1978, 392 A.2d 1027).

Effect of 1973 amendment on role of Commission. — After July 1, 1974 (the effective date of the 1973 amendment to this section), the planning role of the National Capital Planning Commission became limited to preparing the federal elements of the comprehensive plan for the National Capital and to exercising veto authority over the proposed district elements which it found would have a negative impact on the interests of the federal establishment. *Citizens Ass’n v. Zoning Comm’n* (D.C. 1978, 392 A.2d 1027).

No time limit is set for preparation of the plan, nor is there a moratorium upon zoning activities until the plan is in effect. *Citizens Ass’n v. Zoning Comm’n* (D.C. 1978, 392 A.2d 1027).

Meanwhile 1968 plan does not control. — Although the plan to be adopted pursuant to subsection (a) has not yet been published, there was no Congressional intent that until publication a plan prepared by the National Capital Planning Commission in 1968 (when it still retained total authority for land use planning in the District) should control. *Citizens Ass’n v. Zoning Comm’n* (D.C. 1978, 392 A.2d 1027).

CHAPTER 11.—ELECTIONS

- Sec.

1-1101. Election of electors of President and Vice President, Delegate, the members of the Board of Education and of the District Council, the Mayor, and officials of political parties.

1-1103. Board of Elections and Ethics — Terms of office — Vacancies — Designation of Chairman.

1-1104. Qualifications and compensation of members.

1-1105. Functions and authority of Board — Presidential preference primary election.

1-1107. Registration — Conditions for registration — Registration application and notification — Hearings — Appeals.

1-1109. Method of voting — Place — Watchers — Challenging of votes — Appeal from challenged ballots — Handicapped and absent voters — Voting in party elections — Election of unopposed candidates — Availability of regulations.
- Sec.

1-1110. Dates for holding elections — Votes cast for President and Vice President to be counted as votes for presidential electors — Voting hours — Method of deciding tie votes — Naming successor to official who dies, resigns, or is unable to serve — Filling vacancies on Board of Education.

1-1111. Petition for recount by candidate — Procedure — Expenses — Petition for recount by voter to District of Columbia Court of Appeals — Grounds for voiding election.

1-1114. False registration, fraud, and other corrupt practices in elections — Penalties.

1-1115. Candidacy for more than one office not permitted — Choice of nominations — Withdrawal from multiple nominations — Candidacy of officeholder for other office restricted.

§ 1-1101. Election of electors of President and Vice President, Delegate, the members of the Board of Education and of the District Council, the Mayor, and officials of political parties.

In the District of Columbia electors of President and Vice President of the United States, the Delegate to the House of Representatives, the members of the Board of Education, the members of the Council of the District of Columbia, the Mayor and the following officials of political parties in the District of Columbia shall be elected as provided in this chapter:

* * * * *

(2) Delegates to conventions and conferences of political parties including delegates to nominate candidates for the Presidency and Vice Presidency of the United States: Provided, that all elections for delegates to conventions and conferences of political parties, upon the request of the said party, shall be scheduled at the same time as primary, general, or special elections already scheduled for other purposes.

* * * * *

(As amended Aug. 18, 1978, D.C. Law 2-101, § 2, 25 DCR 257.)

Effect of Amendment.
1978 — Act Aug. 18, 1978, D.C. Law 2-101, amended paragraph (2) generally.

Emergency Act Amendment.
1978 — For temporary amendment of subsection (2), see

sec. 2 of the Election of Delegates Emergency Act of 1978 (D.C. Act 2-253, Aug. 2, 1978, 25 DCR 2004).

Legislative History of Law 2-101. Law 2-101 was introduced in Council and assigned Bill No. 2-218, which was referred to the Committee on Government Operations.

The Bill was adopted on first and second readings on May 2, 1978 and May 16, 1978, respectively. Signed by the Mayor on June 15, 1978, it was assigned Act No. 2-207 and transmitted to both Houses of Congress for its review.

Short title. The first section of the act of Aug. 18, 1978, D.C. Law 2-101, provided: "That this act may be cited as the 'Full Political Participation Act of 1978.'"

Section referred to in sections. 1-1141, 1-1151.

§ 1-1103. Board of Elections and Ethics — Terms of office — Vacancies — Designation of Chairman.

* * * * *

(c) A member may be reappointed, and, if not reappointed, the member shall serve until his successor has been appointed and qualifies.

* * * * *

(As amended Aug. 18, 1978, D.C. Law 2-101, § 2, 25 DCR 257.)

Effect of Amendment.
1978 — Act Aug. 18, 1978, D.C. Law 2-101, amended subsection (c) generally.

Legislative History of Law 2-101. See note to § 1-1101.

§ 1-1104. Qualifications and compensation of members.

* * * * *

(c) (1) Each member of the Board, excluding the Chairman, shall receive compensation at the rate of one hundred dollars (\$100) for each eight-hour period or twelve dollars and fifty cents (\$12.50) per hour, whichever provides less, while actually in the service of the Board, not to exceed the sum of twelve thousand five hundred dollars (\$12,500) per annum.

(2) The Chairman of the Board shall receive compensation at the rate of one hundred dollars (\$100) for each eight-hour period or twelve dollars and fifty cents (\$12.50) per hour, whichever provides less, while actually in the service of the Board, not to exceed the sum of twenty-six thousand five hundred dollars (\$26,500) per annum.

* * * * *

(As amended Mar. 10, 1978, D.C. Law 2-50, § 2, 24 DCR 4806; Aug. 18, 1978, D.C. Law 2-101, § 2, 25 DCR 257.)

Effect of Amendments.
1978 — Act March 10, 1978, D.C. Law 2-50, and Act Aug. 18, 1978, D.C. Law 2-101, amended subsection (c) of section generally.

Legislative History of Law 2-50. Law 2-50 was introduced in Council and assigned Bill No. 2-153, which was referred to the Committee on Government Operations.

The Bill was adopted on first and second readings on October 25, 1977 and November 8, 1977, respectively. There being no action by the Mayor, it was assigned Act No. 2-106 and transmitted to both Houses of Congress for its review.

Legislative History of Law 2-101. See note to § 1-1101.

§ 1-1105. Functions and authority of Board — Presidential preference primary election.

(a) The Board shall —

* * * * *

(13) prescribe such regulations and expressly delegate authority to officials and employees of the Board as it considers necessary to carry out its statutory purpose of administering the laws governing elections under this chapter;

(14) take reasonable steps to facilitate voting by blind, physically handicapped, and developmentally disabled persons, qualified to vote under this chapter, and to authorize such persons to cast a ballot with the assistance of a person of their own choosing; and

(15) perform such other duties as are imposed upon it by this chapter.

* * * * *

(e) The Board may employ necessary personnel, at such rates of compensation as may be fixed by the Mayor of the District of Columbia, without reference to the provisions of chapter 51 and subchapter III of chapter 53 of title 5, U.S. Code [relating to the classification of government employees and related matters]. The Board, at the request of the Director of Campaign Finance, shall provide such employees, subject to the compensation provisions of this subsection, as requested to carry out the powers and duties of the Director. Employees so assigned to the Director shall, while so assigned, be under the direction and control of the Director and may not be reassigned without the concurrence of the Director.

No provision of this chapter shall be construed as permitting the Board to appoint any personnel who are not full-time paid employees of the Board to preliminarily determine alleged violations of the law affecting elections, conflicts of interest, or lobbying.

* * * * *

(As amended Aug. 18, 1978, D.C. Law 2-101, § 2, 25 DCR 257.)

Effect of Amendment.
1978 — Act Aug. 18, 1978, D.C. Law 2-101, amended section by striking “and” in paragraph (13) of subsection (a), redesignating paragraph (14) of subsection (a) as (15) and inserting a new paragraph (14) and by adding “and

may not be reassigned without the concurrence of the Director” to the last sentence of the first paragraph of subsection (e).
Legislative History of Law 2-101. See note to § 1-1101. Section referred to in section. 1-1115.

§ 1-1107. Registration — Conditions for registration — Registration application and notification — Hearings — Appeals.

* * * * *

(d) After January 1, 1976, the Board shall distribute a sufficient quantity of such forms to post offices, libraries, schools, firehouses, churches, banks, settlement houses, food establishments, in the District of Columbia, and such other places in the District of Columbia, as the Board deems appropriate.

* * * * *

(h) The Board shall cause a current copy of the list of qualified electors registered to vote to be placed in public buildings of the District of Columbia for a period of not less than fourteen (14) days preceding each election held under this chapter as follows: (1) A city-wide list shall be placed in the main public library; and (2) a ward list for the ward shall be placed in every branch library located within the respective ward.

(As amended Aug. 18, 1978, D.C. Law 2-101, § 2, 25 DCR 257.)

Effect of Amendment.
1978 — Act Aug. 18, 1978, D.C. Law 2-101, amended section by striking the last sentence of subsection (d) and by adding subsection (h).
Emergency Act Amendments.
1978 — For temporary repeal of subsection (d), see sec. 2 of the First Emergency Biannual Mass Mail Registration

Applications Mailing Requirement Repeal Act of 1978 (D.C. Act 2-191, May 11, 1978, 24 DCR 9820); and sec. 2 of the Second Emergency Biannual Mass Mail Registration Applications Mailing Requirement Repeal Act of 1978 (D.C. Act 2-234, July 17, 1978, 25 DCR 1467).
Legislative History of Law 2-101. See note to § 1-1101.

§ 1-1108. Candidates for office — Form, date, and time of day for filing petitions — Number of signatures required — Arrangement of ballot — Nominations for presidential electors — Names of candidates for President and Vice President to appear on ballot under party designation — Form of ballot — Candidates for electors not to appear on ballot — Nominations by nonqualifying political parties — Qualifications of electors — Nomination and election of Delegate, Mayor, Chairman and members of Council — Election of candidates by primary or party runoff election — Nominating petition — Arrangement of names on ballot — Designations of offices of local party committees — Nominating petition for

election of members of Board of Education — Posting of petitions in a public place — Challenging validity of petition — Board of Elections and Ethics to determine validity of petition — Appeal — Arrangement of names on ballot.

NOTES TO DECISIONS

Cited in *Barry v. District of Columbia Bd. of Elections & Ethics* (1978, 448 F. Supp. 1249).

§ 1-1109. Method of voting — Place — Watchers — Challenging of votes — Appeal from challenged ballots — Handicapped and absent voters — Voting in party elections — Election of unopposed candidates — Availability of regulations.

* * * * *

(g) No person shall vote more than once in any election nor shall any person vote in a primary or party election held by a political party other than that to which he or she has declared himself to be a member.

* * * * *

(As amended Aug. 18, 1978, D.C. Law 2-101, § 2, 25 DCR 257.)

Effect of Amendment. 1978 — Act Aug. 18, 1978, D.C. Law 2-101, amended section by striking “runoff” in subsection (g).	Legislative History of Law 2-101. See note to § 1-1101. Section referred to in section. 1-1114.
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§ 1-1110. Dates for holding elections — Votes cast for President and Vice President to be counted as votes for presidential electors — Voting hours — Method of deciding tie votes — Naming successor to official who dies, resigns, or is unable to serve — Filling vacancies on Board of Education.

* * * * *

(e) Whenever a vacancy occurs in the office of member of the Board of Education, such vacancy shall be filled at the next general election which occurs more than one hundred fourteen days after such vacancy occurs. However, the Board of Education shall appoint a person to fill such vacancy until the unexpired term of the vacant office ends or until noon of the thirtieth day after the Board of Elections and Ethics certifies the results of the election of a person to serve the remainder of such unexpired term, whichever occurs first. A person elected to fill a vacancy shall hold office for the duration of the unexpired term of office to which he or she was elected. Any person appointed under this subsection shall have the same qualifications for holding such office as were required of his or her immediate predecessor.

(As amended Aug. 18, 1978, D.C. Law 2-101, § 2, 25 DCR 257.)

Effect of Amendment. 1978 — Act Aug. 18, 1978, D.C. Law 2-101, amended section by striking “the fourth Monday in January next following the date” and inserting in lieu thereof “noon of	the thirtieth day after the Board of Elections and Ethics certifies the results” in subsection (e). Legislative History of Law 2-101. See note to § 1-1101. Section referred to in sections. 1-194, 31-101.
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§ 1-1111. Petition for recount by candidate — Procedure — Expenses — Petition for recount by voter to District of Columbia Court of Appeals — Grounds for voiding election.

* * * * *

(b) Within seven days after the Board certifies the results of an election, any person who voted in the election may petition the District of Columbia Court of Appeals to review such election. In response to such a petition, the court may set aside the results so certified and declare the

true results of the election, or void the election in whole or in part. To determine the true results of an election the court may order a recount or take other appropriate action, whether or not a recount has been conducted or requested pursuant to subsection (a). The court shall void an election only for fraud, mistake, the making of expenditures by a candidate, or the willful receipt of contributions in violation of the District of Columbia Campaign Finance Reform and Conflict of Interest Act (D.C. Code, sec. 1-1121 et seq.), or other defect, serious enough to vitiate the election as a fair expression of the will of the registered qualified electors voting therein. If the court voids an election it may order a special election, which shall be conducted in such manner (comparable to that prescribed for regular elections), and at such time, as the Board shall prescribe. The decision of such court shall be final and not appealable.
(As amended Aug. 18, 1978, D.C. Law 2-101, § 2, 25 DCR 257.)

Effect of Amendment.
1978 — Act Aug. 18, 1978, D.C. Law 2-101, amended section by striking “in violation of this chapter” and inserting in lieu thereof “or the willful receipt of

contributions in violation of the District of Columbia Campaign Finance Reform and Conflict of Interest Act,” in subsection (b).
Legislative History of Law 2-101. See note to § 1-1101.

§ 1-1112. Interference with registration and voting.

Section referred to in section. 1-1114.

§ 1-1113. Appropriations.

Section referred to in section. 1-1114.

§ 1-1114. False registration, fraud, and other corrupt practices in elections — Penalties.

Any person who shall register, or attempt to register, under the provisions of this chapter and make any false representations as to his or her qualifications for voting or for holding elective office, or be guilty of violating section 1-1109, 1-1112, or 1-1113, or be guilty of bribery or intimidation of any voter at the elections herein provided for, or, being registered, shall vote or attempt to vote more than once in any election so held, or shall purloin or secrete any of the votes cast in such elections, or attempt to vote in an election held by a political party other than that to which he or she has declared himself to be affiliated, or, if employed in the counting of votes in any election held pursuant to this chapter knowingly, make a false report in regard thereto, and every candidate, person, or official of any political committee who shall knowingly make any expenditure or contribution in violation of the District of Columbia Campaign Finance Reform and Conflict of Interest Act (D.C. Code, sec. 1-1121 et seq.), shall upon conviction thereof be fined not more than \$10,000 or be imprisoned not more than five years, or both. The provisions of this section shall be supplemental to and not in derogation of any penalties under other laws of the District of Columbia. (Aug. 12, 1955, 69 Stat. 704, ch. 862, § 14; Oct. 4, 1961, 75 Stat. 820, Pub. L. 87-389, § 1(24); Sept. 22, 1970, Pub. L. 91-405, title II, § 205(k), 84 Stat. 854; Dec. 16, 1975, D.C. Law 1-37, § 2(8), 22 DCR 3430; Apr. 23, 1977, D.C. Law 1-126, title IV, § 402, 24 DCR 2372; Aug. 18, 1978, D.C. Law 2-101, § 2, 25 DCR 257.)

Effect of Amendment.
1978 — Act Aug. 18, 1978, D.C. Law 2-101, amended section by striking “in violation of this chapter” and inserting in lieu thereof “in violation of the District of

Columbia Campaign Finance Reform and Conflict of Interest Act.”
Legislative History of Law 2-101. See note to § 1-1101.

§ 1-1115. Candidacy for more than one office not permitted — Choice of nominations — Withdrawal from multiple nominations — Candidacy of officeholder for other office restricted.

(a) No person shall be a candidate for more than one office on the Board of Education or the Council or Mayor in any election for the members of the Board of Education or the Council or

Mayor, and no person shall be a candidate for more than one office on the Council or for the Mayor in any primary election. If a person is nominated for more than one such office, he or she shall, within three days after the Board has sent him notice that he or she has been so nominated, designate in writing the office for which he or she wishes to run, in which case he or she will be deemed to have withdrawn all other nominations. In the event that such person fails within such three-day period to file such a designation with the Board, all such nominations of such person shall be deemed withdrawn.

(b) Notwithstanding the provisions of paragraph (a), a person holding the office of Mayor, Delegate, Chairman or Member of the Council, or member of the Board of Education shall, while holding such office, be eligible as a candiate for any other of such offices in any primary or general election. In the event that said person is elected in a general election to the office for which he or she is a candidate, that person shall, within 24 hours of the date that the Board of Elections and Ethics certifies said person’s election, pursuant to subsection (a) (10) of section 1-1105, either resign from the office that person currently holds of shall decline to accept the office for which he or she was a candidate. In the event that said person elects to resign, said resignation shall be effective not later than 24 hours before the date upon which that person would assume the office to which he or she has been elected. (Aug. 12, 1955, ch. 862, § 15, as added Apr. 22, 1968, Pub. L. 90-292, § 4(9), 82 Stat. 106, and amended Dec. 24, 1973, Pub. L. 93-198, title VII, § 751(9), (10), 87 Stat. 835; Apr. 23, 1977, D.C. Law 1-126, title IV, § 402, 24 DCR 2372; Jan. 2, 1979, D.C. Law 2-101, § 2, 25 DCR 257.)

Effect of Amendment.
1978 — Act Aug. 18, 1978, D.C. Law 2-101, amended section by rewording the first sentence of subsection (a) to add “Mayor” and by amending subsection (b) generally.

Legislative History of Law 2-101. See note to § 1-1101.

NOTES TO DECISIONS

Subsection (b) as it read before 1978 amendment was unconstitutional under the First and Fifth Amendments insofar as it required an elected official in the District to leave office prior to qualifying as an eligible candidate for election to a noncoterminous office. *Barry v. District of Columbia Bd. of Elections & Ethics* (448 F. Supp. 1249, appeal dismissed for lack of standing, 1978, 580 F.2d 695, 188 U.S. App. D.C. 432).

But validity of remaining election law not affected. — The unconstitutionality of the former subsection (b) did not affect the validity of the remaining provisions of the election law. *Barry v. District of Columbia Bd. of Elections & Ethics* (448 F. Supp. 1249, appeal dismissed for lack of standing, 1978, 580 F.2d 695, 188 U.S. App. D.C. 432).

Constitutional rights of office-seekers. — The fact that the offices affected by this section were only recently made elective does not diminish the constitutional rights associated with seeking those offices, for although Congress was not constitutionally required to grant self-government to the District, having done so it could not impose unconstitutional conditions or unnecessarily

burden the First Amendment rights inherent in democratic self-government. *Barry v. District of Columbia Bd. of Elections & Ethics* (448 F. Supp. 1249, appeal dismissed for lack of standing, 1978, 580 F.2d 695, 188 U.S. App. D.C. 432).

Campaigning prior to the nomination deadline is not prohibited by this section. *Barry v. District of Columbia Bd. of Elections & Ethics* (448 F. Supp. 1249, appeal dismissed for lack of standing, 1978, 580 F.2d 695, 188 U.S. App. D.C. 432).

Simultaneous candidacies for mayoralty and Council seat formerly permissible. — This section before the 1978 amendment prohibited simultaneous candidacies for more than one office on the Board of Education or the Council but did not bar one from seeking both the mayoralty and a Council seat in the same election. *Barry v. District of Columbia Bd. of Elections & Ethics* (448 F. Supp. 1249, appeal dismissed for lack of standing, 1978, 580 F.2d 695, 188 U.S. App. D.C. 432).

Cited in *Barry v. District of Columbia Bd. of Elections & Ethics* (1978, 580 F.2d 695, 188 U.S. App. D.C. 432).

CHAPTER 11A.—ELECTION CAMPAIGNS—
LOBBYING—CONFLICT OF INTEREST

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1-1134. Registration of political committees —	1-1151. Establishment of the office of Director.
Statements.	1-1152. Powers of the Director.
1-1135. Registration of candidates.	

Sec.	Sec.
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Subchapter IV.—Finance Limitations	Subchapter VI.—Conflict of Interest and Disclosure
1-1161. General limitations.	1-1181. Conflict of interest.
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Subchapter I.—General Provisions

§ 1-1121. Definitions.

When used in this chapter, unless otherwise provided—

(a) The term “election” means a primary, general, or special election held in the District of Columbia for the purpose of nominating an individual to be a candidate for election to office or for the purpose of electing a candidate to office, and includes a convention or caucus of a political party held for the purpose of nominating such a candidate.

* * * * *

(f) The term “contribution” means—

(1) a gift, subscription (including any assessment, fee, or membership dues), loan (except a loan made in the regular course of business by a business engaged in the business of making loans), advance, or deposit of money or anything of value, made for the purpose of financing, directly or indirectly, the election campaign of a candidate or any operations of a political committee;

* * * * *

(4) the payment, by any person other than a candidate or political committee, of compensation for the personal services of another person which are rendered to such candidate or committee without charge, or for less than reasonable value, for any such purpose or the furnishing of goods, advertising, or services to a candidate’s campaign without charge, or at a rate which is less than the rate normally charged for such services.

Notwithstanding the foregoing, such term shall not be construed to include (A) services provided without compensation, by individuals (including accountants and attorneys) volunteering a portion or all of their time on behalf of a candidate or political committee, (B) personal services provided without compensation by individuals volunteering a portion or all of their time to a candidate or political committee, (C) communications by an organization, other than a political party, solely to its members and their families on any subject, (D) communications (including advertisements) to any person on any subject by any organization which is organized solely as an issue-oriented organization, which communications neither endorse nor oppose any candidate for office, (E) normal billing credit for a period not exceeding thirty days, (F) services of an informational or polling nature, and related thereto, designed to seek the opinion(s) of voters concerning the possible candidacy of qualified electors for public office, prior to such qualified elector’s becoming a candidate as provided in this chapter, (G) the use of real or personal property, and the costs of invitations, food and beverages voluntarily provided by an individual to a candidate in rendering voluntary personal services on the individual’s residential premises for related activities, or (H) the sale of any food or beverage by a vendor for use in a candidate’s campaign at a charge less than the normal comparable charge if such charge for use in a candidate’s campaign is at least equal to the cost of such food or beverage to the vendor; to the extent that the provisions of (G) and (H) do not exceed \$500 each with respect to any candidate’s election.

(g) The term “expenditure” means—

* * * * *

- (4) notwithstanding the foregoing provisions of this paragraph, such term shall not be construed to include the incidental expenses (as defined by the Board) made by or on behalf of individuals in the course of volunteering their time on behalf of a candidate or political committee or the use of real or personal property and the cost of any food or beverage voluntarily provided by an individual to a candidate in rendering voluntary personal services on the individual's residential premises for candidate related activity if the cumulative value of such activities by such individual on behalf of any candidate do not exceed \$500 with respect to any election.
- (h) The term "person" means an individual, partnership, committee, corporation, labor organization, and any other organization.

* * * * *

(As amended Jan. 2, 1979, D.C. Law 2-101, § 3, 25 DCR 257.)

Effect of Amendment.
1978 — Act Aug. 18, 1978, D.C. Law 2-101, amended section by striking "runoff," in subsection (a), by amending paragraphs (1) and (4) of subsection (f) generally, by adding the clause at the end of paragraph

(4) of subsection (g) and by striking "association," in subsection (h).
Legislative History of Law 2-101. See note to § 1-1101. Section referred to in sections. 1-1111, 1-1171.

Subchapter II.—Financial Disclosures

§ 1-1133. Designation of campaign depositories.

- (a) Each political committee, and each candidate accepting contributions or making expenditures, shall designate, in the registration statement required under section 1-1134 or 1-1135, one or more national banks located in the District of Columbia as the campaign depository or depositories of that political committee or candidate. Each such committee or candidate shall maintain a checking account or accounts at such depository or depositories and shall deposit any contributions received by the committee or candidate into that account or accounts. No expenditures may be made by such committee or candidate except by check drawn payable to the person to whom the expenditure is being made on that account or accounts, other than petty cash expenditures as provided in subsection (b).
- (b) A political committee or candidate may maintain a petty cash fund out of which may be made expenditures not in excess of \$50 to any person in connection with a single purchase or transaction. A record of petty cash receipts and disbursements shall be kept in accordance with requirements established by the Board and such statements and reports thereof shall be furnished to the Director as it may require. Payments may be made into the petty cash fund only by check drawn on the checking account or accounts maintained at a campaign depository of such political committee or candidate. (Aug. 14, 1974, Pub. L. 93-376, title II, § 203, 88 Stat. 451; Jan. 2, 1979, D.C. Law 2-101, § 3, 25 DCR 257.)

Effect of Amendment.
1978 — Act Aug. 18, 1978, D.C. Law 2-101, amended section by striking "national bank" and inserting "one or more national banks" in subsection (a), by inserting "or depositories" immediately following the word "depository" throughout subsection (a), by inserting "or accounts" immediately following the word "account"

throughout subsection (a) and by striking "maintained at the campaign depository of such political committee or candidate" and inserting in lieu thereof "or accounts maintained at a campaign depository of such political committee or candidate" in subsection (b).
Legislative History of Law 2-101. See note to § 1-1101.

§ 1-1134. Registartion of political committees — Statements.

* * * * *

- (b) The statement of organization shall include—

* * * * *

(9) the name and address of the bank or banks designated by the committee as the campaign depository or depositories, together with the title and number of each account and safety deposit box used by that committee at the depository or depositories, and the identification of each individual authorized to make withdrawals or payments out of each such account or box; and

* * * * *

(As amended Jan. 2, 1979, D.C. Law 2-101, § 3, 25 DCR 257.)

Effect of Amendment.
1978 — Act Aug. 18, 1978, D.C. Law 2-101, amended section by inserting “or banks” immediately following the work “bank” and by inserting “or depositories”

immediately following the word “depository” throughout paragraph (9) of subsection (b).
Legislative History of Law 2-101. See note to § 1-1101. Section referred to in section. 1-1133.

§ 1-1135. Registration of candidates.

* * * * *

(b) In addition, candidates shall provide the Director the name and address of the campaign depository or depositories designated by that candidate, together with the title and number of each account and safety deposit box used by that candidate at the depository or depositories, and the identification of each individual authorized to make withdrawals or payments out of such account or box, and such other information as shall be required by the Director.

(As amended Jan. 2, 1979, D.C. Law 2-101, § 3, 25 DCR 257.)

Effect of Amendment.
1978 — Act Aug. 18, 1978, D.C. Law 2-101, amended section by inserting “or depositories” immediately

following the word “depository” throughout subsection (b).
Legislative History of Law 2-101. See note to § 1-1101.

§ 1-1136. Reports by political committees and candidates.

(a) The treasurer of each political committee supporting a candidate, and each candidate, required to register under this chapter, shall file with the Director, and with the applicable principal campaign committee, reports of receipts and expenditures on forms to be prescribed or approved by the Director. Except for the first such report which shall be filed on the twenty-first day after August 14, 1974, such reports shall be filed on the 10th day of March, June, August, October, and December in each year during which there is held an election for the office such candidate is seeking, and on the eighth day next preceding the date on which such election is held, and also by the 31st day of January of each year. In addition such reports shall be filed on the 31st day of July of each year in which there is no such election. Such reports shall be complete as of such date as the Director may prescribe, which shall not be more than five days before the date of filing, except that any contribution of \$200 or more received after the closing date prescribed by the Director for the last report required to be filed prior to the election shall be reported within twenty-four hours after its receipt.

* * * * *

(d) Repealed. Aug. 18, 1978, D.C. Law 2-101, § 3, 25 DCR 257.

(As amended Jan. 2, 1979, D.C. Law 2-101, § 3, 25 DCR 257.)

Effect of Amendment.
1978 — Act Aug. 18, 1978, D.C. Law 2-101, amended section by striking “fifteenth and fifth days” and inserting

in lieu thereof “eighth day” in subsection (a) and by repealing subsection (d).
Legislative History of Law 2-101. See note to § 1-1101.

§ 1-1138. Formal requirements respecting reports and statements.

(a) A report or statement required by this subchapter to be filed by a treasurer of a political committee, a candidate, or by any other person, shall be verified by the oath or affirmation of the person filing such report or statement.

* * * * *

(As amended Jan. 2, 1979, D.C. Law 2-101, § 3, 25 DCR 257.)

Effect of Amendment.
1978 — Act Aug. 18, 1978, D.C. Law 2-101, amended section by striking “, taken before any officer authorized to administer oaths” in subsection (a).

Legislative History of Law 2-101. See note to § 1-1101.

§ 1-1141. Effect on liability.

No provision of this chapter shall be construed as creating liability on the part of any candidate for any financial obligation incurred by a political committee. For the purposes of this chapter, and section 1-1101 et seq., actions of an agent acting for a candidate shall be imputed to the candidate: Provided, however, that the actions of such agent may not be imputed to the candidate in the presence of a provision of law requiring a willful and knowing violation of this chapter or section 1-1101 et seq., unless the agency relationship to engage in such an act is shown by clear and convincing evidence. (Aug. 14, 1974, Pub. L. 93-376, title II, § 211, 88 Stat. 454; Jan. 2, 1979, D.C. Law 2-101, § 3, 25 DCR 257.)

Effect of Amendment.
1978 — Act Aug. 18, 1978, D.C. Law 2-101, amended section generally.

Legislative History of Law 2-101. See note to § 1-1101.

Subchapter III.—Director of Campaign Finance

§ 1-1151. Establishment of the office of Director.

* * * * *

(c) Where the Board, following the presentation by the Director of evidence constituting an apparent violation of this chapter, makes a finding of an apparent violation of this chapter, it shall refer such case to the United States Attorney for the District of Columbia for prosecution, and shall make public the fact of such referral and the basis for such finding. In addition, the Board, through its General Counsel, shall initiate, maintain, defend, or appeal any civil action (in the name of the Board) relating to the enforcement of the provisions of this chapter. The Board may, through its General Counsel, petition the courts of the District of Columbia for declaratory or injunctive relief concerning any action covered by the provisions of this chapter. The Director shall have no authority concerning the enforcement of provisions of section 1-1101 et seq., and recommendations of criminal or civil, or both, violations under section 1-1101 et seq. shall be presented by the General Counsel to the Board in accordance with the rules and regulations of general application adopted by the Board in accordance with the provisions of the District of Columbia Administrative Procedure Act (D.C. Code, sec. 1-1501 et seq.). Upon the direction of the Board, the Director may be called upon to investigate allegations of violations of the elections laws in accord with the provisions of this subsection.
(As amended Aug. 18, 1978, D.C. Law 2-101, § 3, 25 DCR 257.)

Effect of Amendment.
1978 — Act Aug. 18, 1978, D.C. Law 2-101, amended subsection (c) generally.

Legislative History of Law 2-101. See note to § 1-1101.
Section referred to in section. 1-1152.

§ 1-1152. Powers of the Director.

(a) The Director, under regulations of general applicability approved by the Board, shall have the power—

* * * * *

- (5) to pay witnesses the same fees and mileage as are paid in like circumstances in the Superior Court of the District of Columbia;
- (6) to accept gifts;
- (7) to institute or conduct, on his or her own motion, an informal hearing on alleged violations of the reporting requirements contained in this chapter. Where the Director, in his or her discretion, determines that such violation has occurred, the Director may issue an order to the offending party or parties to cease and desist such violations within the five (5) day period immediately following the issuance of such order. Should the offending party or parties fail to comply with said order, the Director shall present evidence of such failure to the Board. Following the presentation of said evidence to the Board by the Director, in an adversary proceeding and an open hearing, the Board may refer such matter to the United States Attorney for the District of Columbia in accordance with the provisions of section 1-1151(c) or may dismiss the action.

* * * * *

(c) All investigations of alleged violations of this chapter shall be made by the Director in his or her discretion, in accordance with procedures of general applicability issued by the Director in accordance with the District of Columbia Administrative Procedure Act (D.C. Code, sec. 1-1501 et seq.). All allegations of violations of this chapter which shall be presented to the Board in writing, shall be transmitted to the Director without action by the Board. In a reasonable time, the Director shall cause evidence concerning the alleged violation of this chapter to be presented to the Board, if he or she believes that sufficient evidence exists constituting an apparent violation of this chapter. Following the presentation of such evidence to the Board by the Director, in an adversary proceeding and an open hearing, the Board may refer such matter to the United States Attorney for the District of Columbia in accordance with the provisions of section 1-1151(c), or may dismiss the action. In no case may the Board refer information concerning an alleged violation of this chapter to the United States Attorney for the District of Columbia without the presentation herein provided by the Director. Should the Director fail to present a matter or advise the Board that insufficient evidence exists to present such a matter, or that an additional period of time is needed to investigate the matter further, within ninety (90) days of its receipt by the Board or the Director, the Board may order the Director to present the matter as herein provided. The provisions of this subsection shall in no manner limit the authority of the United States Attorney for the District of Columbia.
(As amended Aug. 18, 1978, D.C. Law 2-101, § 3, 25 DCR 257.)

Effect of Amendment.
1978 — Act Aug. 18, 1978, D.C. Law 2-101, amended section by deleting “and” at the end of paragraph (5) of subsection (a), deleting “.” at the end of paragraph (6) of

subsection (a) and inserting a semicolon in lieu thereof and by adding a new paragraph (7) to subsection (a) and by adding a new subsection (c).
Legislative History of Law 2-101. See note to § 1-1101.

§ 1-1156. District of Columbia Board of Elections and Ethics.

* * * * *

(b)

* * * * *

- (3) Notwithstanding the provisions of paragraph (2) of this subsection, the Board may issue a schedule of fines for violations of this chapter, which may be imposed ministerially by the Director. A civil penalty imposed under the authority of this paragraph may be reviewed by the Board in accordance with the provisions of paragraph (2). The aggregate set of penalties imposed under the authority of this paragraph may not exceed \$500.
- (4) If the person against whom a civil penalty is assessed fails to pay the penalty, the Board shall file a petition for enforcement of its order assessing the penalty in the Superior Court of

the District of Columbia. The petition shall designate the person against whom the order is sought to be enforced as the respondent. A copy of the petition shall be forthwith sent by registered or certified mail to the respondent and his attorney of record, and if the respondent is a political committee, to the Chairman thereof, and thereupon the Board shall certify and file in such court the record upon which such order sought to be enforced was issued. The court shall have jurisdiction to enter a judgment enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order and the decision of the Board or it may remand the proceedings to the Board for such further action as it may direct. The court may determine de novo all issues of law but the Board's findings of fact, if supported by substantial evidence, shall be conclusive.

(c) Upon application made by any individual holding public office, any candidate, any person who may be a potential registrant under this chapter or any political committee, the Board shall provide within a reasonable period of time an advisory opinion, with respect to any specific transaction or activity inquired of, as to whether such transaction or activity would constitute a violation of any provision of this chapter or of any provision of chapter 11 of this title over which the Board has primary jurisdiction. The Board shall publish a concise statement of each request for an advisory opinion, without identifying the person seeking such opinion, in the District of Columbia Register within twenty (20) days of its receipt by the Board. Comments upon such requested opinions shall be received by the Board for a period of at least fifteen (15) days following publication in the District of Columbia Register. The Board may waive the advance notice and public comment provisions, following a finding that the issuance of such advisory opinion constitutes an emergency necessary for the immediate preservation of the public peace, health, safety, welfare or morals.

Advisory opinions shall be published in the District of Columbia Register within thirty days of their issuance, provided, that the identity of any person requesting an advisory opinion shall not be disclosed in the District of Columbia Register without their prior consent in writing. When issued according to rules of the Board, an advisory opinion shall be deemed to be an order of the Board, reviewable in the Superior Court of the District of Columbia by any interested person adversely affected thereby.

(As amended Aug. 18, 1978, D.C. Law 2-101, § 3, 25 DCR 257.)

Effect of Amendment.

1978 — Act Aug. 18, 1978, D.C. Law 2-101, amended section by redesignating paragraph (3) of subsection (b) as paragraph (4) and inserting a new paragraph (3), by striking “, through its General Counsel,” and by inserting

the additional sentences immediately following the phrase “the Board has primary jurisdiction.” in subsection (c) and by adding the new material at the end of subsection (c).

Legislative History of Law 2-101. See note to § 1-1101.

Subchapter IV.—Finance Limitations

§ 1-1161. General limitations.

(a) Repealed. Aug. 18, 1978, D.C. Law 2-101, § 3, 25 DCR 257.

(b) No person shall make any contribution which, and no person shall receive any contribution from any person which when aggregated with all other contributions received from that person, relating to a campaign for nomination as a candidate or election to public office, including both the primary and general or special elections, exceeds—

(1) in the case of a contribution in support of a candidate for Mayor, \$2,000;

(2) in the case of a contribution in support of a candidate for Chairman of the Council, \$1,500;

(3) in the case of a contribution in support of a candidate for member of the Council elected at large, \$1,000;

(4) in the case of a contribution in support of a candidate for member of the Board of Education elected at large or for member of the Council elected from a ward, \$400;

(5) in the case of a contribution in support of a candidate for member of the Board of Education elected from a ward or for official of a political party, \$200; and

(6) in the case of a contribution in support of a candidate for a member of an Advisory Neighborhood Commission, \$25.

(c) No person shall make any contribution in any one election for the Mayor, the Chairman of the Council, each member of the Council, and each member of the Board of Education (including primary, general, and special elections as appropriate) which when aggregated with all other contributions made by that individual in that election exceeds \$4,000.

* * * * *

(As amended Jan. 2, 1979, D.C. Law 2-101, § 3, 25 DCR 257.)

Effect of Amendment.
1978 — Act Aug. 18, 1978, D.C. Law 2-101, repealed subsection (a) and amended subsection (b) and (c) generally.

Legislative History of Law 2-101. See note to § 1-1101.
Section referred to in section. 1-1176.

§ 1-1162. Constituent services.

Section referred to in section. 1-1176.

Subchapter V.—Lobbying

§ 1-1171. Definitions.

As used in this subchapter, unless the context requires otherwise —

- (a) The term “administrative decision” means any activity directly related to action by an executive agency to issue a Mayor’s Order, to cause to be undertaken a rule making proceeding (which does not include a formal public hearing) under the District of Columbia Administrative Procedure Act (D.C. Code, sec. 1-1501 et seq.), or to propose legislation or make nominations to the Council, the President, or the Congress.
- (b) The term “compensation” means any money or an exchange of value received, regardless of its form, by a person acting as a lobbyist.

* * * * *

- (c1) The term “expenditure” means any money or an exchange of value regardless of its form.

* * * * *

- (f) (1) The term “lobbying” means communicating directly with any official in the legislative or executive branch of the District of Columbia government with the purpose of influencing any legislative action or an administrative decision.
- (2) As used in this subchapter, the term “lobbying” shall not include: (A) the appearance or presentation of written testimony by a person in his or her own behalf, or representation by an attorney on behalf of any such person in a rule making (which includes a formal public hearing), rate making, or adjudicatory hearing before an executive agency or the tax assessor; (B) information supplied in response to written inquiries by an executive agency or the Council of the District of Columbia or any public official; (C) inquiries concerning only the status of specific actions by an executive agency or the Council of the District of Columbia; (D) testimony given before a committee of the Council of the District of Columbia or before the Council of the District of Columbia, during which a public record is made of such proceedings or testimony submitted for inclusion in such a public record; (E) a communication made through the instrumentality of a newspaper, television or radio of general circulation or a publication whose primary audience is the organization’s membership; and (F) communications by a bona fide political party as defined in section 1-1121(j).

* * * * *

(h) The term “official in the executive branch” means any public official as defined in section 1-1181 (i) (1) and officers and employees who make field decisions as defined in section 1-1182 (b) (1) who are members, officers, or employees of an executive agency.

(i) The term “official in the legislative branch” means any candidate for Chairman or member of the Council in a primary, special, or general election, the Chairman or Chairman-elect or any member or member-elect of the Council, officers and employees who hold an appointment in the General Service schedule as grade GS-13 or higher, and employees who make field decisions as defined in section 1-1182 (b) (1) who are employed by the Council of the District of Columbia.

* * * * *

(k) Repealed. Apr. 23, 1977, D.C. Law 1-126, title III, § 302(i), 23 DCR 2372.

(l) The term “registrant” means a person who is required to register as a lobbyist under the provisions of section 1-1172.
(As amended Jan. 2, 1979, D.C. Law 2-101, § 3, 25 DCR 257.)

Effect of Amendment.
1978 — Act Aug. 18, 1978, D.C. Law 2-101, amended section by striking the phrase beginning “to promulgate an issuance” and inserting “to cause to be undertaken” in the first sentence of subsection (a), amending subsection (b) generally, adding subsection (c1), adding “or a

publication whose primary audience is the organization’s membership” in subsection (f) (2) (E), changing “1-1182 (b) (2) (A)” to “1-1182 (b) (1)” in subsection (h), changing “GS-15” to “GS-13” and “1-1182 (b) (2) (A)” to “1-1182 (b) (1)” in subsection (i) and adding subsection (l).
Legislative History of Law 2-101. See note to § 1-1101.

§ 1-1172. Persons required to register.

Except as provided in section 1-1173, a person shall register with the Director pursuant to section 1-1174 if such person receives compensation or expends funds in an amount of \$250 or more in any three consecutive calendar month period for lobbying. A person who receives compensation from more than one source shall register under this section if such person receives an aggregate amount of \$250 or more in any three consecutive calendar month period for lobbying. (Aug. 14, 1974, Pub. L. 93-376, title V, § 502, 88 Stat. 462; Sept. 2, 1976, D.C. Law 1-79, title III, § 302, 23 DCR 2050; Jan. 2, 1979, D.C. Law 2-101, § 3, 25 DCR 257.)

Effect of Amendment.
1978 — Act Aug. 18, 1978, D.C. Law 2-101, amended section generally.

Legislative History of Law 2-101. See note to § 1-1101.
Section referred to in section. 1-1171.

§ 1-1173. Exceptions.

A person need not register with the Director pursuant to Section 1-1174 if such person is —

* * * * *

(d) any entity specified in section 47-1554 (d), no activities of which include lobbying, the result of which shall inure to the financial gain or benefit of the entity.
Any person who is exempt from registration under any provision of this section, except a person exempt from registration under the provisions of subsection (a) of this section, may be a registrant for other purposes under this chapter: Provided, however, that no such activity engaged in by such person shall constitute a conflict of interest under the provisions of subchapter VI of this chapter (D.C. Code, sec. 1-1181 et seq.). Registrants have no obligation to report activities in furtherance of exempt activities under this section in activity reports required under section 1-1175.
(As amended Jan. 2, 1979, D.C. Law 2-101, § 3, 25 DCR 257.)

Effect of Amendment.
1978 — Act Aug. 18, 1978, D.C. Law 2-101, amended section by adding subsection (d).

Legislative History of Law 2-101. See note to § 1-1101.
Section referred to in sections. 1-1172, 1-1176.

§ 1-1174. Registration.

Section referred to in section. 1-1172.

§ 1-1175. Activity reports.

(a) Each registrant shall file with the Director between the first and tenth day of July and January of each year a report signed under oath concerning his or her lobbying activities during the previous six month period. If the registrant is not an individual, an authorized officer or agent of the registrant shall sign the form. A registrant must file a separate activity report for each person from whom he or she receives compensation. Such reports shall be public documents and shall be on a form prescribed by the Director and shall include the following:

* * * * *

(E) Each official in the executive or legislative branch with whom the registrant has had written or oral communications (during the reporting period) related to lobbying activities conducted by the registrant shall also be included in such report, identifying the official with whom the communication was made.

* * * * *

(As amended Jan. 2, 1979, D.C. Law 2-101, § 3, 25 DCR 257.)

Effect of Amendment.
1978 — Act Aug. 18, 1978, D.C. Law 2-101, amended section by striking “and the nature of the communication” in paragraph (E) of subsection (a).

Legislative History of Law 2-101. See note to § 1-1101. Section referred to in section. 1-1173.

§ 1-1176. Restricted activities.

(a) No registrant or anyone acting on behalf of a registrant shall offer, give, or cause to be given a gift to an official in the legislative or executive branch or a member of his or her staff, that exceeds \$100 in value in the aggregate in any calendar year. This section shall not be construed to restrict in any manner contributions authorized in sections 1-1161 and 1-1162.

* * * * *

(e) No public official shall be employed as a lobbyist while acting as a public official, except as provided in section 1-1173.

(As amended Jan. 2, 1979, D.C. Law 2-101, § 3, 25 DCR 257.)

Effect of Amendment.
1978 — Act Aug. 18, 1978, D.C. Law 2-101, amended section by adding the last sentence to subsection (a) and adding the exception at the end of subsection (e).

Legislative History of Law 2-101. See note to § 1-1101. **Compiler’s changes.** The word “a” was changed to “as a” in subsection (e).

Subchapter VI.—Conflict of Interest and Disclosure

§ 1-1181. Conflict of interest.

* * * * *

(b) No public official shall use his or her official position or office to obtain financial gain for himself, any member of his or her household, or any business with which he or she or a member of his or her household is associated, other than that compensation provided by law for said public official. This subsection shall not affect a vote by a public official (1) on any matter which affects a class of persons (such a class shall include no less than fifty persons) of which such public official is a member if the financial gain to be realized is de minimus; or (2) on any matter relating to such public official’s compensation as authorized by law; or (3) regarding any elections law. If an action is taken by any department, agency, board or commission of the District of Columbia, except by the Council of the District of Columbia, in violation of this

section, such action may be set aside and declared void and of no effect, upon a proper order of a court of competent jurisdiction.

* * * * *

(h) Neither the Mayor nor any member of the Council of the District of Columbia may represent another person before any regulatory agency or court of the District of Columbia while serving in such office. The preceding sentence does not apply to an appearance by such an official before any such agency or court in his or her official capacity or to the appearance by a member of the Council (not the Chairman) licensed to practice law in the District of Columbia, before any court or non-District of Columbia regulatory agency in any matter which does not affect his or her official position.

(i) As used in this section, the term —

(1) “public official” means (A) the Mayor of the District of Columbia, a member or the Chairman of the Council of the District of Columbia, or a member of the District of Columbia Board of Education; (B) an officer or employee of the District of Columbia government who holds an appointment in the General Service schedule classified as a GS-15 or higher; (C) any person holding an appointment of the District of Columbia Board of Education as a Class 3 or higher; (D) a member of the Zoning Commission or the Board of Zoning Adjustment; (E) and each member of a board or commission who makes field decisions as provided in paragraph (1) of subsection (b) of section 1-1182.

* * * * *

(As amended Jan. 2, 1979, D.C. Law 2-101, § 3, 25 DCR 257.)

Effect of Amendment.

1978 — Act Aug. 18, 1978, D.C. Law 2-101, amended subsections (b), (h) and (i) generally.

Legislative History of Law 2-101. See note to § 1-1101.

Section referred to in sections. 1-1171, 1-1173, 1-1182.

§ 1-1182. Disclosure of financial interest.

(a) Any candidate for nomination for election, or election, to public office at the time he or she becomes a candidate, does not occupy any such office, shall file within one month after he or she becomes a candidate for such office, and the Mayor, and the Chairman and each member of the Council of the District of Columbia holding office under the District of Columbia Self-Government and Governmental Reorganization Act, the President and each member of the Board of Education, and the head of each independent and subordinate agency of the District of Columbia government, and each person paid from funds appropriate to the Office of the Mayor or to the Council of the District of Columbia who occupies a position which is classified as a GS-13 or higher in the General Schedule under section 5332 of Title 5 of the United States Code, and the City Administrator, and the General Counsel to the District of Columbia Board of Elections and Ethics, and the Director of Campaign Finance of the District of Columbia Board of Elections and Ethics, and the People’s Counsel of the District of Columbia, and the Auditor of the District of Columbia, and each member of a board or commission who makes field decisions as provided in subsection (b) (1) of this section regardless of compensation, shall file annually, with the Board a report containing a full and complete statement of —

(1) the name of each business entity (including sole proprietorships, partnerships and corporations) transacting any business with the District of Columbia government (including any of its agencies, departments, boards, commissions, or educational bodies) in which such person (or his or her spouse, if property is jointly titled) —

(A) has a beneficial interest (including those held in such person’s own name, in trust, or in the name of a nominee) exceeding in the aggregate \$1,000: Provided, however, if such interest consists of corporate stocks which are registered and traded upon a recognized national exchange, such aggregate value must exceed \$5000; or

(B) earns income for services rendered during a calendar year in excess of \$1,000; or

(C) serves as an officer, director, partner, employee or in any other fiduciary capacity;

(2) any outstanding individual liability in excess of \$1,000 for borrowing by such person or his or her spouse if such liability is joint, from anyone other than a federal or state insured or regulated financial institution or a member of such person's immediate family;

(3) all real property located in the District of Columbia (and its actual location) in which such person or his or her spouse if such property is jointly titled, has an interest with a fair market value in excess of \$5,000: Provided, however, that this provision shall not apply to personal residences actually occupied by such person or his or her spouse;

(4) all professional or occupational licenses issued by the District of Columbia government held by such person;

(5) all gifts received in an aggregate value of \$100 in a calendar year by such person from any business entity (including sole proprietorships, partnerships, and corporations) transacting any business with the District of Columbia government (including any of its agencies, departments, boards, commissions, or educational bodies); and

(6) an affidavit stating that the subject candidate or office holder has not caused title to property to be placed in another person or entity for purposes of avoiding the disclosure requirements of this subsection. For the purpose of this subsection, the words "immediate family" shall have the same meaning as in section 1-1181. The Board may by rule, provide forms for the submission of the statement required by this subsection in aggregate categories. Information supplied pursuant to this subsection shall be modified by the filer within thirty (30) days of any changes therein, and failure to inform the Board of such modifications, is deemed to be a willful violation of this filing requirement. The Board may, on a case by case basis, provide for certain exemptions to this filing requirement which are deemed to be de minimus by the Board.

(b) (1) Any District of Columbia government employee who makes decisions in areas of contracting, procurement, administration of grants or subsidies, planning or developing policies, inspecting, licensing, regulating, auditing, or affecting the legislative process, or acting in areas of responsibility involving any potential conflict of interest as the Board may determine, shall also file a Financial Statement as required by this section containing the information specified in subsection (b) of this section, provided, that the Board of Elections and Ethics shall cause to be printed in the District of Columbia Register a list of all positions by job classification involving field decisions, as defined in this section, within one hundred twenty days of the effective date of this act, and that no person shall be required to file under the provisions of this subsection until ninety days after the list has been published in the District of Columbia Register.

(2) An individual or class of individuals may be exempted from the filing requirements of subsection (a) of this section only upon a determination by the Board that the duties of the individual or class of individuals do not involve decisions in areas specified in paragraph (1) of this subsection (b).

(3) Before the first day of February of each year, the chief executive of the Executive Branch of the District of Columbia government, the District of Columbia Court of Appeals, the District of Columbia Superior Court, the Council of the District of Columbia, the Board of Education, and any independent agency or instrumentality of the District of Columbia shall submit on behalf of their respective agency, the names and current mailing addresses of all persons required to file a Financial Statement as required by this section with the Director of Campaign Finance. It shall be the responsibility of each chief executive to maintain the currency of the names and current mailing addresses of all persons required to file under this chapter, and to advise the Director of Campaign Finance within twenty-one days of such person's appointment, election, resignation, termination, or death.

* * * * *

(d) (1) Reports required by this section (other than reports so required by candidates) shall be filed not later than sixty days following August 14, 1974, and not later than May 15 of each succeeding year. In the case of any person who ceases, prior to such date in any year, to occupy the office or position the occupancy of which imposes upon him the reporting requirements

contained in subsection (a) shall file such report on the last day he or she occupies such office or position, or on such later date, not more than three months after such last day, as the Board may prescribe. The Board shall publish, in the District of Columbia Register, not later than the first day of June each year, the names of the candidates, officers, and employees who have filed a report under this section. Any paper which has been filed with the Board for longer than seven years, in accordance with the provisions of this section, shall be returned to the person who filed it or his or her legal representative. In the event of the death or termination of service of the Mayor, Chairman or member of the Council of the District of Columbia, or Chairman or member of the Board of Education of the District of Columbia, or officer or employee of the District of Columbia, such papers shall be returned unopened to such individual, or to the surviving spouse or legal representative of such individual within one year after such death or termination of service.

(2) Any report required to be filed with the Director from an employee who is no longer covered under the provisions of this chapter on September 1, 1978, shall be returned to such employee or his or her representative on or before January 1, 1979: Provided, however, that should the Director certify that any routine audit or an investigation concerning compliance with the provisions of this chapter is currently underway, such reports shall not be returned to such employees, except as otherwise provided in this section.

* * * * *

(As amended Aug. 18, 1978, D.C. Law 2-101, § 3, 25 DCR 257.)

Effect of Amendment.
1978 — Act Aug. 18, 1978, D.C. Law 2-101, amended subsections (a), (b) and (d) generally.

Legislative History of Law 2-101. See note to § 1-1101. Section referred to in sections. 1-1171, 1-1181.

Subchapter VII.—Miscellaneous Provisions

§ 1-1191. Penalties and enforcement.

* * * * *

(f) All actions of the Board or of the United States Attorney for the District of Columbia to enforce the provisions of this chapter must be initiated within three (3) years of the actual occurrence of the alleged violation of the chapter.

(As amended Jan. 2, 1979, D.C. Law 2-101, § 3, 25 DCR 257.)

Effect of Amendment.
1978 — Act Aug. 18, 1978, D.C. Law 2-101, amended section by adding subsection (f).

Legislative History of Law 2-101. See note to § 1-1101.

CHAPTER 14.—NATIONAL CAPITAL REGION TRANSPORTATION

Subchapter II.—Compact for Mass Transportation

§ 1-1410. Consent of Congress given for Virginia, Maryland and District of Columbia to enter into compact for regulation of mass transportation in Washington metropolitan area.

NOTES TO DECISIONS

Washington Metropolitan Area Transit Commission is not a federal agency or instrumentality but instead is comparable to a state regulatory agency that satisfies the need to coordinate the regulatory agencies of three political jurisdictions. *Executive Limousine Serv., Inc. v. Adams* (1978, 450 F. Supp. 579).

Compact did not affect regulatory authority of F.A.A. — Congress' consent and approval to this compact and the formation of the Commission did not impinge on the broad power given the Federal Aviation Administration under the Second Washington Airport Act (§ 7-1401 et seq.).

Executive Limousine Serv., Inc. v. Adams (1978, 450 F. Supp. 579).

The Federal Aviation Administration's contractual grant of exclusive rights to a bus company for bus transportation from Dulles International Airport to points

in the District of Columbia was valid and enforceable even though it impinged on the regulatory authority of the Commission. *Executive Limousine Serv., Inc. v. Adams* (1978, 450 F. Supp. 579).

§ 1-1412. Suspension of certain laws for duration of compact — Reinstatement of laws upon termination of compact — Certain police powers of parties to compact and Director of National Park Service not affected — Franchise rights and obligations of D.C. Transit System, Inc., not impaired — “Public Interest” includes interest of carrier employees — Laws relating to carrier employee benefits, wages, hours and working conditions, collective bargaining rights, rights to self organization continue in force — Jurisdiction of Public Service Commission and Interstate Commerce Commission transferred to Washington Metropolitan Area Transit Commission.

NOTES TO DECISIONS

Compact did not affect regulatory authority of F.A.A. — Congress' consent and approval to the compact and the formation of the Washington Metropolitan Area Transit Commission did not impinge on the broad power given the

Federal Aviation Administration under the Second Washington Airport Act (§ 7-1401 et seq.). *Executive Limousine Serv., Inc. v. Adams* (1978, 450 F. Supp. 579).

CHAPTER 15.—ADMINISTRATIVE PROCEDURE

Subchapter I.—Administrative Procedure

§ 1-1501. Other authority.

Section referred to in sections. 1-1152, 1-1171, 2-2504, 4-1102, 6-2401, 32-350, 45-1695, 45-1699.1, 45-1699.21, 47-3328.

NOTES TO DECISIONS

Cited in *Jones v. District Unemployment Comp. Bd.* (D.C. 1978, 395 A.2d 392); *Washington Pub. Interest Organization v. Public Serv. Comm'n* (D.C. 1978, 393 A.2d 71); *Kenmore Joint Venture v. District of Columbia Bd. of Zoning Adjustment* (D.C. 1978, 391 A.2d 269); *Lewis v.*

District of Columbia Comm'n on Licensure to Practice Healing Art (D.C. 1978, 385 A.2d 1148); *Debruhl v. District of Columbia Hackers' License Appeal Bd.* (D.C. 1978, 384 A.2d 421); *Jacobs v. District Unemployment Comp. Bd.* (D.C. 1978, 382 A.2d 282).

§ 1-1502. Definition.

NOTES TO DECISIONS

Meaning of “contested case”. — An administrative proceeding is a “contested case” if it is concerned basically with weighing particular information and arriving at a decision directed at the rights of specific parties, whereas if the agency is acting in a legislative capacity making policy decisions directed toward the general public, its proceeding is not subject to the procedural requirements for contested cases. *Schneider v. District of Columbia Zoning Comm'n* (D.C. 1978, 383 A.2d 324).

Zoning proceeding constituted “rulemaking” rather than a “contested case” where the Zoning Commission rezoned at least 50 lots in six squares and solicited and received testimony regarding the impact of imminent development on the entire vicinity; the fact that the impetus for the hearings came from citizens who were concerned with the impact of a high-rise structure on a

particular piece of property was of no consequence in determining whether the proceeding was a contested case. *Schneider v. District of Columbia Zoning Comm'n* (D.C. 1978, 383 A.2d 324).

The Zoning Commission properly proceeded by rulemaking rather than by contested cases in preparing new zoning proposals for waterfront area. *Citizens Ass'n v. Zoning Comm'n* (D.C. 1978, 392 A.2d 1027).

Scope of subdivision (8) (B) exclusion. — Subdivision (8) (B) was intended to encompass virtually all personnel decisions. *Wells v. District of Columbia Bd. of Educ.* (D.C. 1978, 386 A.2d 703).

Includes intra-agency transfers. — The exclusion under subdivision (8) (B) encompasses personnel decisions transferring employees within an agency. *Wells v. District of Columbia Bd. of Educ.* (D.C. 1978, 386 A.2d 703).

And administrative leave. — Administrative leave requests are facets of personnel management encompassed within the term “selection or tenure” under subdivision (8) (B). *Money v. Cullinane* (D.C. 1978, 392 A.2d 998).

The Metropolitan Police Department’s determination that police officers were not entitled to administrative

leave was a decision of day-to-day government personnel management, which Congress has expressly deemed not a contested case and hence not subject to review by the Court of Appeals. *Money v. Cullinane* (D.C. 1978, 392 A.2d 998).

Cited in *Lechter-Siegel v. District Unemployment Comp. Bd.* (D.C. 1978, 395 A.2d 57).

§ 1-1503. Establishment of general procedures.

NOTES TO DECISIONS

Regulations applicable to related proceedings. — In the absence of regulations directed specifically to hackers’ license revocation proceedings, the regulations applicable

to appeals from license denials govern revocation proceedings as well. *Babazadeh v. District of Columbia Hackers’ License Appeal Bd.* (D.C. 1978, 390 A.2d 1004).

§ 1-1505. Public notice and participation in rulemaking.

Section referred to in section. 6-525.

NOTES TO DECISIONS

Subsection (a) analogous to federal statute. — The requirements in subsection (a) as to notice and comment are closely analogous to the requirements of the Federal Administrative Procedure Act (5 U.S.C. § 551 et seq.) for an informal rulemaking proceeding. *Citizens Ass’n v. Zoning Comm’n* (D.C. 1978, 392 A.2d 1027).

Opportunity to comment and submit data afforded by Zoning Commission. — The requirement under this section and § 5-417 that interested members of the public be afforded a reasonable opportunity to comment and submit data was met by the Zoning Commission’s holding four days of hearings and permitting a substantial period for submission of written comments. *Citizens Ass’n v. Zoning Comm’n* (D.C. 1978, 392 A.2d 1027).

Ex parte communications proper. — Ex parte communications between the Zoning Commission staff and developers which occurred after the closing of the record but before issuance of the Commission’s final orders did

not violate the requirements of the Administrative Procedure Act (§ 1-1501 et seq.) or of due process. *Citizens Ass’n v. Zoning Comm’n* (D.C. 1978, 392 A.2d 1027).

Rulemaking affords limited procedural protections. — In a rulemaking proceeding, which is quasi-legislative in character, all the restraints of the Administrative Procedure Act (§ 1-1501 et seq.) and the full range of due process protections necessary to an adversary adjudication are not applicable. *Citizens Ass’n v. Zoning Comm’n* (D.C. 1978, 392 A.2d 1027).

There is no requirement that opponents of a rule be given the opportunity to cross-examine witnesses testifying favorably or to rebut the evidence presented by proponents; rulemakings differ in this regard from contested cases. *Citizens Ass’n v. Zoning Comm’n* (D.C. 1978, 392 A.2d 1027).

Cited in *Schneider v. District of Columbia Zoning Comm’n* (D.C. 1978, 383 A.2d 324).

§ 1-1509. Contested cases.

Section referred to in sections. 2-499.5, 2-957, 6-528, 6-2303, 47-3215.

NOTES TO DECISIONS

Nondisclosure of complainant’s identity to taxi driver violated section. — Failure of the Hackers’ License Appeal Board to disclose a complainant’s identity to a driver threatened with license suspension denied him both reasonable notice of the issues to be heard, in violation of subsection (a), and the opportunity to effectively cross-examine, in violation of subsection (b). *Babazadeh v. District of Columbia Hackers’ License Appeal Bd.* (D.C. 1978, 390 A.2d 1004).

Limited administrative discretion in reviewing special exception applications. — The discretion of the Board of Zoning Adjustment in reviewing special exception applications is limited to determining whether a proposed exception satisfies the requirements of the regulation under which it is sought, and the burden of so demonstrating rests with the applicant. *Dupont Circle*

Citizens Ass’n v. District of Columbia Bd. of Zoning Adjustment (D.C. 1978, 390 A.2d 1009).

Neither repetition of statutory language nor simple summary of evidence satisfies requirement in subsection (e) that the board’s findings “consist of a concise statement of the conclusions upon each contested issue of fact.” *Wheeler v. District of Columbia Bd. of Zoning Adjustment* (D.C. 1978, 395 A.2d 85).

Substantial evidence as required in subsection (e) means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Wheeler v. District of Columbia Bd. of Zoning Adjustment* (D.C. 1978, 395 A.2d 85).

The Board of Zoning Adjustment was required to support its findings with more than a mere scintilla of rationally connected evidentiary support. *Wheeler v.*

District of Columbia Bd. of Zoning Adjustment (D.C. 1978, 395 A.2d 85).

Findings of Board of Zoning Adjustment comported with subsection (e) where the record revealed adequate Board consideration of an application for a special exception and included facts from which the Board could make a reasonable judgment that the application met the regulatory prerequisites, even though the applicant itself did almost nothing to demonstrate that the proposed exception satisfied the relevant regulations, and the hearing was little more than a formality. *Dupont Circle Citizens Ass’n v. District of Columbia Bd. of Zoning Adjustment* (D.C. 1978, 390 A.2d 1009).

Requirements of subsection (e) were not met by the Board of Zoning Adjustment where the Board in granting a special exception did not adequately consider the issues of traffic, impact on neighborhood character and need, which Zoning Regulation § 3104.44 required it to address. *Dupont Circle Citizens Ass’n v. District of Columbia Bd. of Zoning Adjustment* (D.C. 1978, 390 A.2d 1009).

Due process requirements in hacker suspension proceedings. — In hacker suspension proceedings, due process requires that a taxi driver be afforded the opportunity to inspect his file and to secure information

vital to his own investigation and defense. *Babazadeh v. District of Columbia Hackers’ License Appeal Bd.* (D.C. 1978, 390 A.2d 1004).

Due process requires the Hackers’ License Appeal Board to notify a charged party of his right to inspect his file after formal charges are filed and before the date of the suspension hearing. *Babazadeh v. District of Columbia Hackers’ License Appeal Bd.* (D.C. 1978, 390 A.2d 1004).

Firearms control statute conforms to Administrative Procedure Act. — The Firearms Control Regulations Act of 1975 (§ 6-1801 et seq.) conforms to the Administrative Procedure Act (§ 1-1501 et seq.) in the case of revocation or denial of a registration certificate for a dealer’s license. *McIntosh v. Washington* (D.C. 1978, 395 A.2d 744).

Cited in *Jones v. District Unemployment Comp. Bd.* (D.C. 1978, 395 A.2d 392); *Washington Pub. Interest Organization v. Public Serv. Comm’n* (D.C. 1978, 393 A.2d 71); *Wells v. District of Columbia Bd. of Educ.* (D.C. 1978, 386 A.2d 703); *Kober v. District Unemployment Comp. Bd.* (D.C. 1978, 384 A.2d 633); *Jameson’s Liquors, Inc. v. District of Columbia Alcoholic Beverage Control Bd.* (D.C. 1978, 384 A.2d 412); *Schneider v. District of Columbia Zoning Comm’n* (D.C. 1978, 383 A.2d 324).

§ 1-1510. Judicial review.

Section referred to in section. 40-1125.

NOTES TO DECISIONS

Scope of Court of Appeals’ authority to review. — The fact that an administrative agency may be without authority to invalidate the statutory or regulatory scheme under which it operates does not mean that the review of such agency decision, including resolution of the constitutional questions raised by a party, is in a tribunal other than the District of Columbia Court of Appeals. *Debruhl v. District of Columbia Hackers’ License Appeal Bd.* (D.C. 1978, 384 A.2d 421).

Standard for review. — Appellate court reviewing a decision of the Board of Zoning Adjustment required that there be a rational connection between the facts found by the Board and its decision. *Dupont Circle Citizens Ass’n v. District of Columbia Bd. of Zoning Adjustment* (D.C. 1978, 390 A.2d 1009).

Order requiring removal of illegal backyard structure was vacated as contrary to law where for over six years officials had failed to enforce a series of enforcement orders against the petitioner and a prior owner and where the equities compellingly favored petitioner because he doubtless took the value of the structure into account when purchasing the property, because he would lose substantial rental income from the structure were it destroyed and because the government had had actual notice of the structure’s illegality for a long period. *Wieck v. District of Columbia Bd. of Zoning Adjustment* (D.C. 1978, 383 A.2d 7).

Reviewing court criticized as ratification of an illegal act the grant of a special exception by the Board of Zoning Adjustment to a party whose prior use of the property as a parking lot had been unlawful under Zoning Regulation § 8105.1. *Dupont Circle Citizens Ass’n v. District of Columbia Bd. of Zoning Adjustment* (D.C. 1978, 390 A.2d 1009).

Evidence sufficient to support board’s findings. — *Wheeler v. District of Columbia Bd. of Zoning Adjustment* (D.C. 1978, 395 A.2d 85).

Cited in *Carr v. Brown* (D.C. 1978, 395 A.2d 79); *Lechter-Siegel v. District Unemployment Comp. Bd.* (D.C. 1978, 395 A.2d 57); *Babazadeh v. District of Columbia Hackers’ License Appeal Bd.* (D.C. 1978, 390 A.2d 1004); *Wells v. District of Columbia Bd. of Educ.* (D.C. 1978, 386 A.2d 703); *Haugness v. District Unemployment Comp. Bd.* (D.C. 1978, 386 A.2d 700); *Association For Preservation of 1700 Block of N St., N.W., & Vicinity v. District of Columbia Bd. of Zoning Adjustment* (D.C. 1978, 384 A.2d 674); *Kober v. District Unemployment Comp. Bd.* (D.C. 1978, 384 A.2d 633); *Jameson’s Liquors, Inc. v. District of Columbia Alcoholic Beverage Control Bd.* (D.C. 1978, 384 A.2d 412); *Arellano v. District of Columbia Police & Firemen’s Retirement & Relief Bd.* (D.C. 1978, 384 A.2d 29); *Cunning v. District Unemployment Comp. Bd.* (D.C. 1978, 382 A.2d 1010); *Jacobs v. District Unemployment Comp. Bd.* (D.C. 1978, 382 A.2d 282).

CHAPTER 16.—CODIFICATION AND PUBLICATION OF ACTS, RESOLUTIONS, RULES, AND ORDERS

§ 1-1602. Municipal Code — Contents — Publication — Supplements — Distribution — Publication of Council acts and resolutions.

Section referred to in section. 40-1110.

TITLE 1.—ADMINISTRATION, APPENDIX

Compiler's note. Organization actions taken by the Mayor have heretofore been published in the appendix to Title 1 of this Code. However, the "District of Columbia Codification Act of 1975" (D.C. Law 1-19, title II, D.C.

Code, sec. 1-1601 et seq.) as amended by D.C. Law 2-319, requires the Mayor to compile and publish such actions. Accordingly, they no longer appear in the appendix to Title 1 of this Code.

Reorganization Plan No. 2 of 1975

Cited in Dupont Circle Citizens Ass'n v. District of Columbia Bd. of Zoning Adjustment (D.C. 1978, 390 A.2d 1009).

Organization Order No. 38. — Commission on the Status of Women

(Organization Order No. 38 establishing the Commission on the Status of Women was repealed by Sept. 22, 1978, D.C. Law 2-109, § 6, 25 DCR 1456.)

Legislative History of Law 2-109. See note to § 2-2601.

Compiler's note. Sec. 6 of D.C. Law 2-109, which repealed this order, provided that all personnel, property and records of and unexpended balances of appropriations

and other money available to the Commission on the Status of Women are transferred to the Commission established pursuant to D.C. Law 2-109.

TITLE 2.—DISTRICT BOARDS AND COMMISSIONS	
Chap.	Sec.
1. Healing Arts Practice	2-101
4. Nurses, Physical Therapists, and Psychologists	2-401
6. Pharmacy	2-601
9. Accountants	2-901
17. Armory Board	2-1701
24. Security Agents and Brokers	2-2401
25. Criminal Justice Supervisory Board	2-2501
26. Commission for Women	2-2601

CHAPTER 1.—HEALING ARTS PRACTICE

Subchapter I.—Licensure and Other Regulatory Provisions

§ 2-123. Professional misconduct or incapacity — Sanctions — Procedures and standards.

NOTES TO DECISIONS

Revocation of license held denial of due process. — Where District of Columbia Commission on Licensure to Practice the Healing Art failed to adopt properly a policy statement specifying the degree of supervision required to be exercised by a licensed physician over acupuncture technicians, the medical profession had not received adequate notice of that conduct which was proscribed, and

the revocation of a physician’s license for “misconduct” in failing to supervise adequately the actions of the acupuncture technicians he employed denied the physician his due process rights. *Lewis v. District of Columbia Comm’n on Licensure to Practice Healing Art* (D.C. 1978, 385 A.2d 1148).

CHAPTER 4.—NURSES, PHYSICAL THERAPISTS, AND PSYCHOLOGISTS	
Subchapter V.—Occupational Therapists	
Sec.	Sec.
2-499. Purpose.	2-499.8. Waiver of requirements for licensure.
2-499.1. Definitions.	2-499.9. Issuance of license.
2-499.2. License required.	2-499.10. Limited permit.
2-499.3. Persons and practices not affected.	2-499.11. Suspension and revocation of license: Refusal to renew.
2-499.4. Board of Occupational Therapy Practice: Establishment: Compensation.	2-499.12. Renewal of license.
2-499.5. Board of Occupational Therapy Practice: Powers and duties.	2-499.13. Renewal of license: Non-practicing therapists.
2-499.6. Requirements for licensure.	2-499.14. Fees.
2-499.7. Examination for licensure.	2-499.15. False representation of registration prohibited.
	2-499.16. Enforcement: Penalties.
	2-499.17. Severability.

Subchapter IV.—Psychologists

§ 2-492. Procedure for suspension or revocation of license or certificate — Hearing — Review of decision.

NOTES TO DECISIONS

Cited in *Debruhl v. District of Columbia Hackers’ License Appeal Bd.* (D.C. 1978, 384 A.2d 421).

*Subchapter V.—Occupational Therapists***§ 2-499. Purpose.**

In order to safeguard the public health, safety and welfare, to protect the public from being misled by incompetent, unscrupulous and unauthorized persons, to assure the highest degree of professional conduct on the part of occupational therapy assistants and to assure the availability of occupational therapy services of high quality to persons in need of such services, it is the purpose of this subchapter to provide for the regulation of persons offering occupational therapy services to the public. (Apr. 6, 1978, D.C. Law 2-67, § 2, 24 DCR 6815.)

Legislative History of Law 2-67. Law 2-67 was introduced in Council and assigned Bill No. 2-71, which was referred to the Committee on Public Services and Consumer Affairs. The Bill was adopted on first and second readings on September 13, 1977 and October 11, 1977, respectively. There being no action by the Mayor, it

was assigned Act No. 2-137 and transmitted to both Houses of Congress for its review.

Short title. The first section of the act of Apr. 6, 1978, D.C. Law 2-67, provided: "That this act may be cited as the 'District of Columbia Occupational Therapy Practice Act of 1977.' "

§ 2-499.1. Definitions.

As used in this subchapter:

(a) The term "Board" means the Board of Occupational Therapy Practice.

(b) The term "occupational therapy" means the evaluation and treatment of individuals whose ability to cope with the tasks of living are threatened or impaired by developmental deficits, the aging process, poverty and cultural differences, physical injury or illness, or psychological and social disability. The treatment utilizes task oriented activities to prevent or correct physical or emotional deficits on the individual, with special emphasis on the developmental and functional skills needed throughout life. Specific therapeutic and diagnostic techniques used in occupational therapy include, but are not limited to, self care and other activities of daily living, developmental oriented tasks, training in basic work habits, perceptual-motor and sensori-motor activities, prevocational evaluation and treatment, fabrication and application of splints, selection and use of adaptive equipment, and exercises and other modalities to enhance functional performance. Such techniques are applied in the treatment of individual patients or clients, in groups, or through social systems.

(c) The term "occupational therapist" means a person licensed to practice occupational therapy as defined in this subchapter, and whose license is in good standing.

(d) The term "occupational therapy assistant" means a person licensed to assist in the practice of occupational therapy under the supervision or with the consultation of an occupational therapist, and whose license is in good standing.

(e) The term "occupational therapy aide" means a person who assists in the practice of occupational therapy, who works only under the direct supervision of an occupational therapist, and whose activities require an understanding of occupational therapy but does not require professional or advanced training in the basic anatomical, biological, psychological and social sciences involved in the practice of occupational therapy.

(f) The term "person" means any individual, partnership, unincorporated organization, or corporate body, except that only an individual may be licensed under this subchapter.

(g) The term "Association" means the District of Columbia Occupational Therapy Association.

(Apr. 6, 1978, D.C. Law 2-67, § 3, 24 DCR 6815.)

Legislative History of Law 2-67. See note to § 2-499.

§ 2-499.2. License required.

No person shall practice occupational therapy in the District of Columbia or hold himself out as an occupational therapist or as an occupational therapy assistant, or as being able to practice occupational therapy or to render occupational therapy services in the District of Columbia,

unless he is licensed in accordance with the provisions of this subchapter except as referred to in section 2-499.3. (Apr. 6, 1978, D.C. Law 2-67, § 4, 24 DCR 6815.)

Legislative History of Law 2-67. See note to § 2-499.

§ 2-499.3. Persons and practices not affected.

(a) Nothing in this subchapter shall be construed as preventing or restricting the practice, services, or activities of:

(1) any person employed as an occupational therapist or occupational therapy assistant by the federal government, if such person provides occupational therapy solely under the direction or control of the organization by which he is employed; or

(2) any person pursuing a course of study leading to a degree or certificate in occupational therapy in an accredited or approved educational program, if such activities and services constitute a part of a supervised course of study and if such person is designated by a title which clearly indicates his status as a student or trainer; or

(3) any person fulfilling the supervised field work experience requirements of section 2-499.6, if such activities and services constitute a part of the experience necessary to meet the requirements of that section; or

(4) any person employed by or working under the supervision of an occupational therapist as an occupational therapy aide; or

(5) any person performing occupational therapy services in the District of Columbia who is not licensed under this subchapter, if such services are performed for no more than ninety (90) days in a calendar year in association with an occupational therapist licensed under this subchapter, if such person meets the qualifications for license under this subchapter except for the Board's qualifying examination; or

(6) any person performing occupational therapy services in the District of Columbia, who is not licensed under this subchapter, if such services are performed for no more than ninety (90) days in a calendar year in association with an occupational therapist licensed under this subchapter, if

(A) such person is licensed under the law of any state which has licensure requirements at least as stringent as the requirements of this subchapter, as determined by the Board; or

(B) such person meets the requirements for certification as an occupational therapist registered (OTR), or a certified occupational therapy assistant (COTA), established by the American Occupational Therapy Association.

(b) No provision of this subchapter shall be construed to prohibit physicians, nurses, physical therapists, osteopathic physicians, surgeons, or clinical psychologists from using occupational therapy as a part of or incidental to their profession, when they practice their profession under the statutes applicable to their profession, provided no person shall hold himself out, or otherwise represent himself, as an occupational therapist. (Apr. 6, 1978, D.C. Law 2-67, § 5, 24 DCR 6815.)

Legislative History of Law 2-67. See note to § 2-499.

Section referred to in section. 2-499.2.

§ 2-499.4. Board of Occupational Therapy Practice: Establishment: Compensation.

(a) There shall be established in the District of Columbia the Board of Occupational Therapy Practice. The Board shall consist of at least seven (7) members appointed by the Mayor and approved by the Council. At least four (4) of the Board members shall be occupational therapists with three (3) years of experience as an occupational therapist and at least one (1) member shall be an occupational therapy assistant, and these members shall at all times be holders of valid licenses for the practice of occupational therapy in the District of Columbia except for the members of the first Board, all of whom shall fulfill the requirements for licensure of this

subchapter. The remaining two (2) members shall be members of the health professions or members of the public with an interest in the rights of the consumers of health services.

(b) The Mayor shall, within sixty (60) days following the effective date of this subchapter, appoint three (3) Board members for a term of one (1) year; three (3) for a term of two (2) years; and one (1) for a term of three (3) years. Appointments made thereafter shall be for three-year terms, but no person shall be appointed to serve more than two (2) consecutive terms. Terms shall begin on the first day of the calendar year and end on the last day of the calendar year or until successors are appointed, except for the first appointed members, who shall serve through the last calendar day of the year which they are appointed before commencing the terms prescribed by this section.

(c) Within thirty (30) days after the effective date of this subchapter, and annually thereafter, the Association and other interested persons may submit names to the Mayor for consideration for each of the seven (7) Board positions created by subsection (b) of this section. In the event of a mid-term Board vacancy, the Association and other interested persons may recommend the names of at least two (2) and not more than three (3) persons to fill that vacancy and the Mayor shall, as soon thereafter as practicable, select and appoint one (1) person to fill the unexpired term.

(d) The Board shall meet during the first month of each calendar year to select a chairperson and for other purposes. At least one (1) additional meeting shall be held before the end of each calendar year. Further meetings may be convened at the call of the chairperson or the written request of any two (2) Board members. A majority of the members of the Board shall constitute a quorum for all purposes. All meetings of the Board shall be open to the public, except that the Board may hold closed sessions to prepare, approve, grade, or administer examinations, or upon request of an applicant who fails an examination, to prepare a response indicating the reason for his failure.

(e) Members of the Board shall receive no compensation for their services, but shall be entitled to reasonable travel and other expenses incurred in the execution of their powers and duties. (Apr. 6, 1978, D.C. Law 2-67, § 6, 24 DCR 6815.)

Legislative History of Law 2-67. See note to § 2-499.

§ 2-499.5. Board of Occupational Therapy Practice: Powers and duties.

(a) The Board shall administer, coordinate, and enforce the provisions of this subchapter, evaluate the qualifications, and supervise the examinations of applicants for licensure under this subchapter, and may issue subpoenas, examine witnesses, and administer oaths, and may investigate allegations of practices violating the provisions of this subchapter.

(b) The Board shall within three (3) months after the confirmation of the members of the first Board adopt rules and regulations relating to professional conduct and to the carrying out of the policy of this subchapter including, but not limited to, regulations relating to professional licensure and to the establishment of ethical standards of practice for persons holding a license to practice occupational therapy in the District of Columbia, and may amend or repeal any rule or regulation of the Board. Such procedures shall be consistent with the contested case provisions of the District of Columbia Administrative Procedures Act (D.C. Code, sec. 1-1509), including reasonable notice and an opportunity for a hearing.

(c) The Board shall conduct such hearings and keep such records and minutes as are necessary to carry out its functions. The Board shall provide reasonable public notice to the appropriate persons of the times and places of all hearings authorized under this subchapter in such a manner and at such times as it may determine by its rules and regulations.

(d) The Board may utilize employees of the Department of Economic Development in the administration of this subchapter. (Apr. 6, 1978, D.C. Law 2-67, § 7, 24 DCR 6815.)

Legislative History of Law 2-67. See note to § 2-499.

§ 2-499.6. Requirements for licensure.

(a) An applicant applying for a license as an occupational therapist or as an occupational therapy assistant shall file a written application on forms provided by the Board, showing to the satisfaction of the Board that he:

(1) is of good moral character;

(2) has successfully completed the academic requirements of an educational program in occupational therapy recognized by the Board, with concentration in biological or physical science, psychology and sociology and with education in activity analysis (for an occupational therapist, such a program shall be accredited by the American Medical Association in collaboration with the American Occupational Therapy Association; for an occupational therapy assistant, such a program shall be approved by the American Occupational Therapy Association);

(3) has successfully completed a period of supervised field work experience at a recognized educational institution or a training program approved by the educational institution where he met the academic requirements (for an occupational therapist, a minimum of six (6) months of supervised field work experience is required; for an occupational therapy assistant, a minimum of two (2) months of supervised field work experience is required); and

(4) has passed an examination conducted by the Board as provided in section 2-499.7.

(b) An applicant who has practiced as an occupational therapy assistant for four (4) years, to include a minimum of six (6) months of supervised field work experience, may take the examination to be licensed as an occupational therapist without meeting the educational requirements for occupational therapists made otherwise applicable under subsection (a) (2) of this section. (Apr. 6, 1978, D.C. Law 2-67, § 8, 24 DCR 6815.)

Legislative History of Law 2-67. See note to § 2-499.

Section referred to in sections. 2-499.3, 2-499.7, 2-499.8.

§ 2-499.7. Examination for licensure.

(a) Any person applying for licensure shall, in addition to demonstrating his eligibility in accordance with the requirements of section 2-499.6, make application to the Board for examination at least thirty (30) days prior to the date of examination, upon a form and in such a manner as the Board shall prescribe. Such application shall be accompanied by the fee prescribed by section 2-499.14, which fee shall not be refunded. A person who fails an examination may make application for a reexamination accompanied by the prescribed fee.

(b) Each applicant for licensure under this subchapter shall be examined by the Board by a written examination to test his knowledge of the basic and clinical sciences relating to occupational therapy, and occupational therapy theory and practice. This examination will also test the applicant's professional skills and judgment in the utilization of occupational therapy techniques and methods, and such other subjects as the Board may deem useful to determine the applicant's fitness to practice. The Board shall establish standards for acceptable performance.

(c) Applicants for licensure shall be examined at a time and place and under such supervision as the Board may determine. Examinations shall be given at least twice each year within the District of Columbia. The Board shall give reasonable public notice of such examinations in accordance with its rules at least sixty (60) days prior to their administration and shall notify by mail all individual examination applicants of the time and place of their administration.

(d) Applicants may obtain their examination scores and may review their papers in accordance with such rules as the Board may establish. (Apr. 6, 1978, D.C. Law 2-67, § 9, 24 DCR 6815.)

Legislative History of Law 2-67. See note to § 2-499.

Section referred to in section. 2-499.6.

§ 2-499.8. Waiver of requirements for licensure.

(a) The Board shall waive the examination and grant a license to any person certified prior to the effective date of this subchapter as an occupational therapist registered (O.T.R.) or a certified occupational therapy assistant (C.O.T.A.) by the American Occupational Therapy Association. The Board may waive the examination and grant a license to any person so certified after the effective date of this subchapter, if the Board considers the requirements for such certification to be equivalent to the requirements for licensure as set forth in this subchapter.

(b) The Board may waive the examination and grant a license to any applicant who shall present proof of current licensure as an occupational therapist or an occupational therapy assistant in another state or territory of the United States which requires standards for licensure considered by the Board to be equivalent to the requirements for licensure as set forth in this subchapter.

(c) The Board shall waive the educational, experience, and examination requirements for licensure in sections 2-499.6 (a) (2) and 2-499.6 (a) (3) for applicants for licensure who present evidence to the Board that they have been engaged in the practice of occupational therapy on and prior to the effective date of this subchapter. Such proof of actual practice shall be presented to the Board in such a manner as it may prescribe by rule. To obtain the benefits of this waiver, an applicant shall file an application for a license no later than one (1) year from the effective date of this subchapter. (Apr. 6, 1978, D.C. Law 2-67, § 10, 24 DCR 6815.)

Legislative History of Law 2-67. See note to § 2-499.

§ 2-499.9. Issuance of license.

(a) The Board shall issue a license to any person who meets the requirements of this subchapter upon payment of the license fee prescribed.

(b) Any person who is issued a license as an occupational therapist under the terms of this subchapter may use the words "occupational therapist", "licensed occupational therapist", or "occupational therapist registered", or he may use the letters "O.T.", "L.O.T.", "O.T.R.", in connection with his name, or place of business to denote his registration hereunder.

(c) Any person who is issued a license as an occupational therapy assistant under the terms of this subchapter may use the words "occupational therapy assistant", "licensed occupational therapy assistant", or "certified occupational therapy assistant", or he may use the letters "O.T.A.", "L.O.T.A.", or "C.O.T.A.", in connection with his name, or place of business to denote his registration hereunder. (Apr. 6, 1978, D.C. Law 2-67, § 11, 24 DCR 6815.)

Legislative History of Law 2-67. See note to § 2-499.

§ 2-499.10. Limited permit.

Persons who have completed the educational and experience requirements, for an occupational therapist, or an occupational therapy assistant as set forth in this subchapter shall be allowed to practice occupational therapy under the supervision of an occupational therapist registered. This limited permit can be renewed only once until the date on which the results of the next qualifying examination have been made public. (Apr. 6, 1978, D.C. Law 2-67, § 12, 24 DCR 6815.)

Legislative History of Law 2-67. See note to § 2-499.

§ 2-499.11. Suspension and revocation of license: Refusal to renew.

(a) The Board may deny or refuse to renew a license, may suspend or revoke a license, or may impose probationary conditions where the licensee or applicant for license has been found by the Board to be in violation of professional conduct which has endangered or is likely to endanger the health, welfare, or safety of the public. The violation of such professional conduct may include:

(1) obtaining a license by means of fraud, misrepresentation, or concealment of material facts;

(2) being in violation of professional conduct as defined in the rules established by the Board, or in violation of the Code of Ethics adopted and published by the Board; or

(3) being convicted of a crime other than minor offenses defined as “minor misdemeanor(s)”, “violation(s)”, or “offense(s)”, in any court if the acts for which he was convicted are found by the Board to have a direct bearing on whether he should be entrusted to serve the public in the capacity of an occupational therapist or occupational therapy assistant.

(b) A denial, refusal to renew, suspension, revocation, or imposition of probationary conditions upon a license under subsection (a) of this section may be ordered by the Board in a decision made after a hearing in the manner provided by the rules adopted by the Board. One (1) year from the date of the revocation of a license, an application may be made to the Board for reinstatement. The Board shall have the discretion to accept or reject an application for reinstatement and may, but shall not be required to, hold a hearing to consider such reinstatement. (Apr. 6, 1978, D.C. Law 2-67, § 13, 24 DCR 6815.)

Legislative History of Law 2-67. See note to § 2-499.

§ 2-499.12. Renewal of license.

(a) Licenses issued under this subchapter shall be subject to annual renewal, upon the payment of a renewal fee, and shall expire unless renewed in the manner prescribed by the rules of the Board. The Board may establish additional requirements for license renewal which provide evidence of continued competency. The Board may provide for the late renewal of a license upon the payment of a late fee in accordance with its rules, but no such late renewal of a license may be granted more than five (5) years after its expiration.

(b) A suspended license is subject to expiration and may be renewed as provided in this section, but such renewal shall not entitle the licensee, whose license remains suspended until reinstated, to engage in the licensed activity or in any other conduct or activity in violation of the order or judgment by which the license was suspended. If a license revoked on disciplinary grounds is reinstated, the licensee, as a condition of reinstatement, shall pay the renewal fee and any late fee that may be applicable. (Apr. 6, 1978, D.C. Law 2-67, § 14, 24 DCR 6815.)

Legislative History of Law 2-67. See note to § 2-499.

§ 2-499.13. Renewal of license: Non-practicing therapists.

(a) Every registered occupational therapist who is engaged in or who proposes to engage in the practice of occupational therapy in the District of Columbia is hereby required to register with the Board annually. Any registrant who allows his registration to lapse by failing to renew the registration annually may be reinstated by the Board by showing cause satisfactory to the Board for such failure and upon payment of all required fees. The Mayor is authorized to change from time to time the period for which registration or renewal thereof may be issued.

(b) Any person registered under the provisions of this subchapter, but not practicing in the District of Columbia, shall give written notice of such fact to the Board. Upon receipt of such notice, the Board shall place the name of such person upon the non-practicing list. While remaining on such list, such person shall not be subject to the payment of any renewal fee and shall not hold himself out as a registered occupational therapist nor practice as such in the District of Columbia. Application for renewal or registration and payment of a renewal fee for the current year shall be made to the Board by any such person desiring to resume practice as a registered occupational therapist. (Apr. 6, 1978, D.C. Law 2-67, § 15, 24 DCR 6815.)

Legislative History of Law 2-67. See note to § 2-499.

§ 2-499.14. Fees.

The Board shall make public, in the manner established by its rules, fees in amounts determined by the Mayor, for the following purposes:

- (a) application for examination;
- (b) initial license fee;
- (c) renewal of license fee;
- (d) late renewal fee; and
- (e) endorsement fee.

(Apr. 6, 1978, D.C. Law 2-67, § 16, 24 DCR 6815.)

Legislative History of Law 2-67. See note to § 2-499.
Section referred to in section. 2-499.7.

§ 2-499.15. False representation of registration prohibited.

(a) It is unlawful for any person who is not registered under this subchapter as an occupational therapist or as an occupational therapy assistant, whose registration has been suspended or revoked, to use, in connection with his name or place of business, the words, “occupational therapist”, “licensed occupational therapist”, “occupational therapist registered”, “occupational therapy assistant”, “certified occupational therapy assistant”, or “licensed occupational therapy assistant”, or the letters “O.T.”, “L.O.T.”, “O.T.R.”, “O.T.A.”, “C.O.T.A.”, or “L.O.T.A.”, or any other words, letters, abbreviations, or insignia indicating or implying that he is an occupational therapist or an occupational therapy assistant in any way, orally, in writing, in print or by sign, directly or by implication, or representing himself as an occupational therapist or an occupational therapy assistant.

(b) No firm, partnership, association, or corporation shall advertise or otherwise offer to provide or convey the impression that it is providing occupational therapy unless an individual holding a current and valid license or permit under this subchapter is or will, at the appropriate time, be rendering the occupational therapy services to which reference is made. (Apr. 6, 1978, D.C. Law 2-67, § 17, 24 DCR 6815.)

Legislative History of Law 2-67. See note to § 2-499.

§ 2-499.16. Enforcement: Penalties.

Any person who shall violate the provisions of this subchapter shall be guilty of a misdemeanor and shall be punished by a fine not exceeding five hundred dollars (\$500), or by imprisonment for not more than one (1) year, or both. (Apr. 6, 1978, D.C. Law 2-67, § 18, 24 DCR 6815.)

Legislative History of Law 2-67. See note to § 2-499.

§ 2-499.17. Severability.

If a part of this subchapter is held unconstitutional or invalid, all valid parts that are severable from the invalid or unconstitutional part shall remain in effect. If a part of this subchapter is held unconstitutional or invalid in one or more of its applications, the part shall remain in effect in all constitutional and valid applications that are severable from the invalid applications. (Apr. 6, 1978, D.C. Law 2-67, § 20, 24 DCR 6815.)

Legislative History of Law 2-67. See note to § 2-499.

CHAPTER 6.—PHARMACY

Sec.		
2-601.	Pharmacy regulations — Sale of drugs restricted — Licensed pharmacists in drug stores —	Physicians, dentists, and veterinarians exempt — Sale of poisons — Permits to

Sec.		Sec.	
	sell — Sales by minors — Sale of household drugs — Patent medicine.		Review in District of Columbia Court of Appeals — Public display of license.
2-606.	Renewal of licenses or permits to sell poisons — Renewal obtained by fraud — Failure of board to renew — Hearings — Attendance of witnesses — Report of findings — Revocation of license —	2-608.	Board of Pharmacy to have same powers as Commission on Licensure to Practice the Healing Art — Accounting — Records — Reports.
		2-609.	Fees — Expenses — Compensation of Board.

§ 2-601. Pharmacy regulations — Sale of drugs restricted — Licensed pharmacists in drug stores — Physicians, dentists, and veterinarians exempt — Sale of poisons — Permits to sell — Sales by minors — Sale of household drugs — Patent medicine.

It shall be unlawful for any person not licensed as a pharmacist within the meaning of this chapter to conduct or manage any pharmacy, drug or chemical store, apothecary shop, or other place of business for the retailing, compounding, or dispensing of any drugs, chemicals, or poisons, or for the compounding of physicians' prescriptions, or to keep exposed for sale, at retail, any drugs, chemicals, or poisons, except as hereinafter provided; or, except as hereinafter provided, for any person not licensed as a pharmacist within the meaning of this chapter to compound, dispense, or sell, at retail, any drug, chemical, poison, or pharmaceutical preparation upon the prescription of a physician, or otherwise, or to compound physicians' prescriptions, except as an aid to and under the proper supervision of a pharmacist licensed under this chapter. And it shall be unlawful for any owner or manager of a pharmacy, drug store, or other place of business to cause or permit any person other than a licensed pharmacist to compound, dispense, or sell, at retail, any drug, medicine, or poison, except as an aid to and under the proper supervision of a licensed pharmacist: Provided, that nothing in this section shall be construed to interfere with any legally registered practitioner of medicine, dentistry, or veterinary surgery in the compounding of his own prescriptions, or to prevent him from supplying to his patients such medicines as he may deem proper; nor with the exclusively wholesale business of any dealer who shall be licensed as a pharmacist, or who shall keep in his employ at least one person who is so licensed, except as hereinafter provided; nor with the sale by others than pharmacists of poisonous substances sold exclusively for use in the arts, when such substances are sold in unbroken packages bearing labels having plainly printed upon them the name of the contents, the word "poison," when practicable the name of at least one suitable antidote, and the name and address of the vendor: Provided further, that such person, firm, or corporation has obtained a permit from the Board of Pharmacy, which grants the right and privilege to make such sales, such permit to be issued for a period of three years, and that each sale of such substance be registered as required of a licensed pharmacist, and it shall be unlawful for any person under the age of eighteen years to sell such substances, and in no case shall the sale be made to a person under eighteen years of age except upon the written order of a person known or believed to be an adult: And provided further, that persons other than registered pharmacists may sell household ammonia and concentrated lye, in sealed containers plainly labeled, so as to indicate the nature of the contents with the word "poison," and with a statement of two or more antidotes to be used in case of poisoning, and may sell bicarbonate of soda, borax, cream of tartar, olive oil, sal ammoniac, and sal soda; and persons other than registered pharmacists may, furthermore sell in original sealed containers, properly labeled, such compounds as are commonly known as "patent" or "proprietary" medicines, except those the sale of which is regulated by the provisions of sections 2-610 and 2-612. (May 7, 1906, 34 Stat. 175, ch. 2084, § 1; July 22, 1976, D.C. Law 1-75, § 3(r), 23 DCR 1180; Apr. 18, 1978, D.C. Law 2-70, § 21, 24 DCR 6867.)

Effect of Amendment.
1978 — Act April 18, 1978, D.C. Law 2-70, amended section by striking the phrase "or as insecticides," in the first sentence.
Legislative History of Law 2-70. Law 2-70 was introduced in Council and assigned Bill No. 2-180, which

was referred to the Committee on Transportation and Environmental Affairs. The Bill was adopted on first and second readings on November 8, 1977 and November 22, 1977, respectively. Signed by the Mayor on February 3, 1978, it was assigned Act No. 2-145 and transmitted to both Houses of Congress for its review.

§ 2-606. Renewal of licenses or permits to sell poisons — Renewal obtained by fraud — Failure of board to renew — Hearings — Attendance of witnesses — Report of findings — Revocation of license — Review in District of Columbia Court of Appeals — Public display of license.

In the month of November of each year every licensed pharmacist and every licensed dealer in poisons for use in the arts, whose license or permit has been issued not less than three years prior to the first day of such month, shall apply to the Board of Pharmacy for the renewal of such license or permit. And said Board is hereby authorized, upon the payment of such fees as are hereinafter provided, to renew such license or permit in the month of November for a period of three years from the 31st day of October immediately preceding the date thereof. And every license or permit not renewed within the month of November as aforesaid shall be void and of no effect unless and until renewed. Any license, permit, or renewal obtained through fraud or by any false or fraudulent representation shall be void and of no effect. No person shall make any false or fraudulent representation for the purpose of procuring a license, permit, or renewal thereof either for himself or for another.

In the event the board shall fail or refuse to renew any license or permit within the month of November, for which application has been made, it shall make written record of the reasons for such nonrenewal. Upon request of the person seeking renewal of his license or permit, the Board shall grant a hearing, and the applicant shall have the right to be represented by counsel, introduce evidence, and examine and cross-examine witnesses. The secretary of the Board is hereby empowered to administer oaths.

The said Board shall have power to require the attendance of persons and the production of books and papers and to require such persons to testify in any and all matters within its jurisdiction. The chairman and the secretary of the Board shall have power to issue subpoenas, and upon the failure of any person to attend as a witness when duly subpoenaed or to produce documents when duly directed by said Board, the Board shall have power to refer the said matter to any judge of the Superior Court of the District of Columbia, who may order the attendance of such witness or the production of such books and papers or require the said witness to testify, as the case may be; and upon the failure of the witness to attend, to testify, or to produce such books or papers, as the case may be, such witness may be punished for contempt of court as for failure to obey a subpoena issued or to testify in a case pending before said court.

The Board shall make a written report of its findings after such hearing, which report, with a transcript of the entire record of the proceedings, shall be filed with the Commissioner of the District of Columbia, and, if the board's finding is adverse to the person seeking reissuance of his license or permit, the license or permit shall stand revoked and annulled at the expiration of thirty days from the filing of the report, unless a petition for review is filed in the District of Columbia Court of Appeals, and a stay is granted.

Every license to practice pharmacy and every permit to sell poisons for use in the arts and every current renewal of such permit shall be conspicuously displayed by the person to whom the same has been issued in the pharmacy, drug store, or place of business, if any, of which the said person is the owner or manager. (May 7, 1906, 34 Stat. 177, ch. 2084, § 7; Mar. 4, 1927, 44 Stat. 1414, ch. 497, § 3; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32 (a), (b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; Aug. 31, 1954, 68 Stat. 1048, ch. 1173, § 1; July 8, 1963, 77 Stat. 78, Pub. L. 88-60, § 6; Dec. 23, 1963, 77 Stat. 616, Pub. L. 88-241, § 4; July 29, 1970, Pub. L., 91-358, title I, §§ 155(c) (6), 164(k), 85 Stat. 570, 586; Apr. 18, 1978, D.C. Law 2-70, § 21, 24 DCR 6867.)

Effect of Amendment.

1978 — Act April 18, 1978, D.C. Law 2-70, amended section by striking out the phrase "or as insecticides" at each place it occurred.

Legislative History of Law 2-70. See note to § 2-601.

Succession in Government. The District of Columbia Council and the office of Commissioner of the District of

Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-608. Board of Pharmacy to have same powers as Commission on Licensure to Practice the Healing Art — Accounting — Records — Reports.

Said Board of Pharmacy shall have all such rights, powers, and duties with respect to the examination of applicants for license as pharmacists and with reference to the issue of licenses to practice pharmacy and of permits to sell poisons for use in the arts as the said board (Commission on Licensure to Practice the Healing Art in the District of Columbia) has with reference to the examination of applicants for license to practice medicine, surgery, and midwifery, and with reference to the issue of licenses to such persons, except in so far as may be inconsistent with the provisions of this chapter. The treasurer of said Board shall render to the Commissioner of the District of Columbia accounts of his receipts and disbursements from time to time as said Commissioner shall direct. Said Board shall keep records of its proceedings, and such records shall be prima facie evidence of all matters contained therein in all courts in the District of Columbia. Said Board shall in the month of July of each year, make to the Commissioner of the District of Columbia a written report of its proceedings, of its receipts and disbursements, and of all licenses and permits issued. (May 7, 1906, 34 Stat. 178, ch. 2084, § 9; Feb. 27, 1907, 34 Stat. 1005, ch. 2085, § 1; Apr. 18, 1978, D.C. Law 2-70, § 21, 24 DCR 6867.)

Effect of Amendment.

1978 — Act April 18, 1978, D.C. Law 2-70, amended section by striking out the phrase “or as insecticides” in the first sentence.

Legislative History of Law 2-70. See note to § 2-601.

Succession in Government. The District of Columbia Council and the office of Commissioner of the District of

Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-609. Fees — Expenses — Compensation of Board.

Applicants for license to practice pharmacy and for permits to sell poisons for use in the arts shall pay the following fee: For examination for license as pharmacist, \$15, and for each renewal thereof \$3; for a permit for the sale of poisons for use in the arts, \$1, and for each renewal thereof, 50 cents.

All fees for licenses to practice pharmacy and all fees aforesaid shall be paid to the treasurer of the Board of Pharmacy of the District of Columbia before any applicant may be admitted to examination and before any license or permit, or any renewal thereof; may be issued by the said Board. And all expenses of said Board incident to the execution of the provisions of this chapter shall be paid from the fees collected by the Board of Pharmacy aforesaid. If any balance remains on hand on the 30th day of June of any year the members of said Board appointed as such shall be paid therefrom such reasonable amounts as the Commissioner of the District of Columbia may determine. (May 7, 1906, 34 Stat. 179, ch. 2084, § 10; Feb. 27, 1907, 34 Stat. 1005, ch. 2085, § 1; Mar. 4, 1927, 44 Stat. 1415, ch. 497, § 4; Apr. 18, 1978, D.C. Law 2-70, § 21, 24 DCR 6867.)

Effect of Amendment.

1978 — Act April 18, 1978, D.C. Law 2-70, amended section by striking out the phrase “or as insecticides” at each place it occurred.

Legislative History of Law 2-70. See note to § 2-601.

Succession in Government. The District of Columbia Council and the office of Commissioner of the District of

Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-610. Sale of cocaine, morphine, opium, chloral hydrate, or compounds thereof, restricted — Prescription — Filling and refilling prescription — Exceptions — Wholesale trade.

Section referred to in section. 2-601.

§ 2-612. Restrictions on sale or delivery of poisonous compounds — Records of sales — Use of “poison labels” — “Poison bottles” — Exceptions.

Section referred to in section. 2-601.

CHAPTER 9.—ACCOUNTANTS

Sec.	Sec.
2-911 to 2-931. [Repealed].	2-953. Offices — Registration thereof.
2-941. Purpose.	2-954. Annual permits to practice.
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2-946. Exceptions.	2-959. Injunction against unlawful acts.
2-947. Certified public accountants.	2-960. Penalty.
2-948. Temporary certificate and permit as a certified public accountant.	2-961. Single act evidence of practice.
2-949. Public accountants — Registration thereof.	2-962. Ownership of an accountant's working papers.
2-950. Foreign accountants — Registration thereof.	2-963. Construction.
2-951. Partnerships and corporations composed of certified public accountants — Registration thereof.	2-964. Effect of repeal of prior act.
2-952. Partnerships and corporations composed of public accountants — Registration thereof.	2-965. Effective date.

§§ 2-911 to 2-931. Repealed. Mar. 16, 1978, D.C. Law 2-59, § 25, 24 DCR 5975.

Legislative History of Law 2-59. See note to § 2-941.
Section referred to in section. 2-964.

Cross reference. For provisions enumerating effect of repeal of §§ 2-911 to 2-931 on prior actions and continuation of the Board of Accountancy, see § 2-964.

§ 2-941. Purpose.

It is the policy of the District of Columbia and the purpose of this chapter to promote the dependability of information which is used for guidance in financial transactions or for accounting for or assessing the status or performance of commercial and noncommercial enterprises, whether public or private. The public interest requires that persons attesting as experts in accountancy to the reliability or fairness of presentation of such information be qualified in fact to do so; that a public authority competent to prescribe and assess the qualifications of public accountants be established; and that the attestation of financial information by persons professing expertise in accountancy be reserved to persons who demonstrate their ability and fitness to observe and apply the standards of the accounting profession. (Mar. 16, 1978, D.C. Law 2-59, § 2, 24 DCR 5975.)

Legislative History of Law 2-59. Law 2-59 was introduced in Council and assigned Bill No. 2-69, which was referred to the Committee on Public Services and Consumer Affairs. The Bill was adopted on first, amended first, and second readings on July 26, 1977, October 25, 1977 and November 8, 1977, respectively. Signed by the Mayor on January 9, 1978, it was assigned Act No. 2-130 and transmitted to both Houses of Congress for its review.

Short title. The first section of Act Mar. 16, 1978, D.C. Law 2-59, 24 DCR 5975, provided: “That this act may be cited as the ‘District of Columbia Public Accountancy Act of 1977.’ ”
Section referred to in section. 2-943.

§ 2-942. Definitions.

As used in this chapter:

- (a) The term “Board” means the District of Columbia Board of Accountancy established under section 2-943.

(b) The term “Council” means the Council of the District of Columbia as established under section 1-141(a).

(c) The term “District” means the District of Columbia.

(d) The term “Mayor” means the Mayor of the District of Columbia, as established under section 1-161(a).

(e) The term “state” includes any state, territory or insular possession of the United States and the District of Columbia.

(f) The term “valid permit” means an unexpired permit which has not been suspended or revoked.

(Mar. 16, 1978, D.C. Law 2-59, § 3, 24 DCR 5975.)

Legislative History of Law 2-59. See note to § 2-941.

§ 2-943. Board of Accountancy.

(a) There is hereby established a board of accountancy in and for the District to be known as the District of Columbia Board of Accountancy and to consist of five (5) members appointed by the Mayor.

(b) The Board shall be appointed as follows:

(1) One (1) member of the Board shall be appointed from among those persons registered as public accountants under section 2-949, and one (1) member of the Board shall be appointed from among persons who are not accountants and who represent the consumer in accountancy.

(2) Three (3) members of the Board shall each hold a certificate as a certified public accountant issued under section 2-947, hold a valid permit to practice issued under section 2-954 and, at the time of the member’s appointment, have been engaged in the practice of public accountancy as a certified public accountant in the District for a period of not less than five (5) years.

(c) The members of the Board first appointed under this chapter shall be appointed for terms of office as follows: one (1) member for a term of one (1) year, two (2) members for a term of two (2) years each; and two (2) members for a term of three (3) years each. Their successors shall be appointed for a term of three (3) years. Vacancies occurring during a term shall be filled by appointment for the unexpired term. Upon the expiration of a member’s term of office, that member shall continue to serve until his or her successor has been appointed. No person who has served two (2) successive full terms shall be eligible for reappointment until after the lapse of one (1) year. An appointment to fill an unexpired term shall not be considered a full term.

(d) The Mayor may remove any member of the Board appointed under subsection (b) (2) of this section whose permit to practice has become void or has been revoked or suspended. The Mayor may, after a hearing, remove any member of the Board for neglect of duty or other just cause.

(e) The Board shall promulgate regulations for the orderly conduct of its affairs and for the administration of this chapter.

(f) A majority of the Board shall constitute a quorum for the transaction of business.

(g) The Board is authorized to adopt a seal.

(h) The Board shall meet at least once a year.

(i) The Board is authorized to prescribe such rules and regulations not inconsistent with the provisions of this chapter as it deems consistent with or required by the public welfare and policy set forth in section 2-941. Such rules and regulations shall include but are not limited to the following:

(1) rules of procedure;

(2) rules of professional conduct for establishing and maintaining high standards of competence and integrity in the profession of public accountancy;

(3) regulations governing educational requirements for the issuance of the certificate of certified public accountant and requirements of continuing education to be met from time to

time by the holders of such certificates and permits as a condition of their continuing in the practice of public accountancy; and

(4) regulations governing corporations practicing public accounting including but not limited to:

(A) rules concerning their style, name, title and affiliation with any other organization;

(B) establishing reasonable standards with respect to professional liability insurance and unimpaired capital; and

(C) prescribing joint and several liability for torts relating to professional services for the shareholders of any corporation practicing public accounting and failing to comply with the standards issued under this paragraph (4).

(Mar. 16, 1978, D.C. Law 2-59, § 4, 24 DCR 5975.)

Legislative History of Law 2-59. See note to § 2-941.

§ 2-944. Fees.

The Mayor is authorized to set fees, including such fees as may be necessary to cover the costs of administering this chapter, and the dates of issuance and expiration of certificates and permits to practice under this chapter. (Mar. 16, 1978, D.C. Law 2-59, § 5, 24 DCR 5975.)

Legislative History of Law 2-59. See note to § 2-941.

§ 2-945. Acts declared unlawful.

(a) Except as permitted by the Board pursuant to section 2-946, no person shall assume or use the title or designation “certified public accountant” or the abbreviation “CPA” or any other title, designation, words, letters, abbreviation, sign, card or device tending to indicate that the person is a certified public accountant, unless the person has received a certificate as a certified public accountant under section 2-947, holds a valid permit issued under section 2-954 and all of the person’s offices in the District for the practice of public accounting are maintained and registered as required under section 2-953.

(b) No partnership or corporation shall assume or use the title or designation “certified public accountant” or the abbreviation “CPA” or any other title, designation, words, letters, abbreviation, sign, card or device tending to indicate that the partnership or corporation is composed of certified public accountants unless the partnership or corporation is registered as a partnership or corporation of certified public accountants under section 2-951, holds a valid permit issued under section 2-954 and all offices of such partnership or corporation in the District for the practice of public accounting are maintained and registered as required under section 2-953.

(c) No person shall assume or use the title or designation “public accountant” or any other title, designation, words, letters, abbreviation, sign, card or device tending to indicate that such person is a public accountant unless that person is:

(1) registered as a public accountant under section 2-949, holds a valid permit issued under section 2-954 and all of such person’s offices in the District for the practice of public accounting are maintained and registered as required under section 2-953; or

(2) a certified public accountant under section 2-947.

(d) No partnership or corporation shall assume or use the title or designation “public accountant” or any other title, designation, words, letters, abbreviation, sign, card or device tending to indicate that the partnership or corporation is composed of public accountants unless it is a partnership or corporation of public accountants as described in section 2-952 or a partnership or corporation of certified public accountants under section 2-951, holds a valid permit issued under section 2-954 and all offices of the partnership or corporation in the District for the practice of public accounting are maintained and registered as required under section 2-953.

(e) No person, partnership or corporation shall assume or use the title or designation “certified accountant,” “chartered accountant,” “enrolled accountant,” “licensed accountant,” “registered accountant,” “accredited accountant” or any other title or designation likely to be confused with “certified public accountant” or “public accountant”, or any of the abbreviations “CA”, “PA”, “RA”, “LA”, or “AA”, or similar abbreviations likely to be confused with “CPA”: Provided, however, that anyone who holds a valid permit issued under section 2-954 and all of whose offices in the District for the practice of public accounting are maintained and registered as required under section 2-953 may hold himself out to the public as an “accountant” or “auditor”.

(f) No person shall sign or affix his or her name or any trade or assumed name used by the person in his or her profession or business to any opinion or certificate attesting in any way to the reliability of any representation or estimate in regard to any person or organization embracing financial information or facts concerning compliance with conditions established by law or contract, including but not limited to statutes, ordinances, regulations, grants, loans and appropriations, together with any wording accompanying or contained in the opinion or certificate which indicates that the person is either an accountant or an auditor or has expert knowledge in accounting or auditing, unless the person holds a valid permit issued under section 2-954 and all of the person’s offices in the District for the practice of public accounting are maintained and registered under section 2-953: Provided, however, that the provisions of this subsection shall not prohibit any officer, employee, partner or principal of any organization from affixing his or her signature to any statement or report in reference to the affairs of the organization with any wording designating the position, title or office which he or she holds in the organization nor shall the provisions of this subsection prohibit any act of a public official or public employee in the performance of his or her official duties.

(g) No person shall sign or affix a partnership or corporate name to any opinion or certificate attesting in any way to the reliability of any representation or estimate in regard to any person or organization embracing financial information or facts respecting compliance with conditions established by law or contract, including but not limited to statutes, ordinances, regulations, grants, loans and appropriations, together with any wording accompanying or contained in the opinion or certificate which indicates that the partnership or corporation is composed of or employs accountants, auditors or other persons having expert knowledge in accounting or auditing, unless the partnership or corporation holds a valid permit issued under section 2-954 and its offices in the District for the practice of public accounting are maintained and registered as required under section 2-953.

(h) No person shall assume or use the title or designation “certified public accountant” or “public accountant” in conjunction with names indicating or implying that there is a partnership or corporation or in conjunction with the designation “and Company” or “and Co.” or a similar designation if there is in fact no bona fide partnership or corporation registered under sections 2-951 or 2-952: Provided, that a sole proprietor or partnership lawfully using such title or designation in conjunction with such names or designation on the effective date of this chapter may continue to do so. (Mar. 16, 1978, D.C. Law 2-59, § 6, 24 DCR 5975.)

Legislative History of Law 2-59. See note to § 2-941.

Section referred to in sections. 2-946, 2-947, 2-949, 2-955, 2-959, 2-960.

§ 2-946. Exceptions.

(a) Nothing contained in this chapter shall prohibit any person not a certified public accountant or public accountant from serving as an employee of or an assistant to a certified public accountant, a public accountant, a partnership or corporation composed of certified public accountants, public accountants holding a permit to practice issued under section 2-954 or a foreign accountant registered under section 2-950: Provided, that such employee or assistant shall not issue any accounting or financial statement over his or her name.

(b) Nothing contained in this chapter shall prohibit a certified public accountant, a registered public accountant of a state or any accountant who holds a certificate, degree or license in a

foreign country, constituting a recognized qualification for the practice of public accounting in that country, from temporarily or periodically performing specific accounting work in the District if he or she is conducting a regular practice in the state or foreign country: Provided, that the practice is incidental to his or her regular practice and is conducted in conformity with the regulations and rules of professional conduct promulgated by the Board.

(c) Notwithstanding the prohibitions contained in section 2-945, a foreign accountant who has registered under the provisions of section 2-950 and who holds a valid permit issued under section 2-954 may use the title under which he or she is generally known in his or her country, followed by the name of the country from which the foreign accountant received his or her certificate, license or degree. (Mar. 16, 1978, D.C. Law 2-59, § 7, 24 DCR 5975.)

Legislative History of Law 2-59. See note to § 2-941.

§ 2-947. Certified public accountants.

(a) The Board is authorized to issue a certificate of “certified public accountant” to any applicant who furnishes to the Board satisfactory proof that he or she meets the following qualifications:

(1) is at least eighteen (18) years of age;

(2) is of good moral character;

(3) is a resident of the District or has been regularly employed in the District for the immediate six (6) months prior to the final date for accepting applications for the written examinations; or, in the case of an employee of a certified public accountant or a firm of certified public accountants registered to practice in the District, has been a bona fide resident of a foreign country for a period of not less than the eighteen (18) months preceding the date of filing an application and is not qualified to be examined and to receive a certificate of certified public accountant in the state of last residence solely because of the aforesaid residence abroad;

(4) has passed a written examination in accounting and auditing and such related subjects as the Board shall determine to be appropriate; and

(5) (A) holds a baccalaureate degree with a concentration in accounting conferred by a college or university recognized by the Board or holds that which the Board determines to be substantially the equivalent thereof; or

(B) holds a baccalaureate degree acceptable to the Board supplemented with the equivalent of an accounting concentration including related courses in other areas of business administration; and

(6) has paid all required fees.

(b) Waiver of the educational requirements specified in subsection (a) (5) of this section shall be permitted only under the following circumstances:

(1) The Board shall waive all educational requirements specified in subsection (a) (5) of this section for an applicant who is registered as a public accountant under section 2-949;

(2) The Board may waive the educational requirements specified in subsection (a) (5) of this section for an applicant who, on the effective date of this chapter, was employed as a staff accountant in the District by anyone practicing public accounting: Provided, that the applicant can provide proof satisfactory to the Board of four (4) years of experience acceptable to the Board in the practice of public accounting or equivalent work experience; or

(3) The Board may waive the educational requirements in subsection (a) (5) for an applicant who, as a result of a written examination given or authorized by the Board to test the applicant’s educational qualifications demonstrates to the Board’s satisfaction that he or she is as well equipped educationally as if he or she met the applicable educational requirements specified above.

(c) The examination described in subsection (a) (4) of this section shall be held at least once a year and at such other times as the Board may prescribe. The Board may make use of all or

any part of the Uniform Certified Public Accountant Examination and Advisory Grading Service which the Board deems appropriate.

(d) An applicant who provides proof satisfactory to the Board that he or she has a reasonable expectation of meeting the educational requirements within ninety (90) days following the examination prescribed in subsection (a) (4) of this section shall be eligible to take said examination: Provided, that the applicant has met all the other requirements of subsection (a) of this section and: Provided, further, that no certificate shall be issued nor shall credit for the examination or any part of it be given, unless the requirement is in fact completed within the ninety (90) days or within such time as the Board in its discretion may allow upon application.

(e) The Board may, by regulation, provide for granting credit to an applicant for the satisfactory completion of a written examination given by the licensing authority of any state in any one or more of the subjects included in the examination required pursuant to subsection (a) (4) of this section: Provided, that any examination approved as a basis for any credit shall, in the judgment of the Board, be at least as thorough as the most recent examination given by the Board at the time of the granting of the credit.

(f) The Board may prescribe by regulation the terms and conditions under which an applicant who passes the examination in one (1) or more of the subjects indicated in the examination prescribed under subsection (a) (4) of this section may be re-examined. It may also provide by regulation for a reasonable waiting period before the applicant's re-examination in a subject he or she has failed. Subject to the foregoing and such other regulations as the Board may adopt governing re-examinations, an applicant shall be entitled to any number of re-examinations under subsection (a) (4) of this section.

(g) In general the applicable educational requirements under subsection (a) (5) of this section shall be in effect on the date of the examination by which the applicant successfully completes his or her examination under subsection (a) (4) of this section. However the Board may provide by regulation for exceptions to the general rule in order to prevent what it determines to be undue hardship to applicants resulting from changes in the educational requirements in subsection (a) (5) of this section.

(h) Any person who has received from the Board a certificate as a certified public accountant and who holds a permit issued under section 2-954 which is in full force and effect shall be styled and known as a "certified public accountant" and may also use the abbreviation "CPA".

(i) Nothing in this chapter shall be construed to prohibit any person holding a certificate issued pursuant to this section, but not holding a valid permit issued under section 2-954, from assuming or using the title or designation "certified public accountant" or the abbreviation "CPA" or any other title, designation, words, letters, abbreviation, sign, card or device tending to indicate that such person is a certified public accountant: Provided, that:

(1) the Board has not revoked, suspended or refused to renew a permit previously issued to the person for any cause specified in section 2-955;

(2) such assumption or use is not incident to the practice of public accountancy; and

(3) such assumption or use is not in conjunction with or incident to any opinion or certificate within the purview of sections 2-945 (f) and 2-945 (g).

(j) Persons who, on the effective date of this chapter, hold a certified public accountant certificate or an endorsement of a certificate theretofore issued under the laws of the District shall not be required to obtain additional certificates under this chapter, but shall otherwise be subject to the provisions of this chapter and such certificate theretofore issued shall, for all purposes, be considered a certificate issued under and subject to the provisions of this chapter.

(k) The Board may, in its discretion, waive the examination under subsection (a) (4) of this section and may issue an endorsement of a certificate as a "certified public accountant" to an applicant who:

(1) is a certified public accountant of a state or is the holder of a certificate of certified public accountant, or the equivalent thereof, issued in any foreign country: Provided, that the

requirements for such certificate are, in the opinion of the Board, equivalent to those herein required; and

(2) meets the qualifications specified in, subsections (a) (1), (a) (2), (a) (5) and (a) (6) of this section: Provided, that an applicant who is a certified public accountant in good standing of a state shall not be required to meet more extensive educational and experience qualifications than those required by the District at the time such applicant was granted his or her certificate of certified public accountant by such state; and

(3) declares his or her intention under oath for opening and maintaining or being employed in an office in the District for the purpose of engaging in the full-time public practice of his or her profession as a certified public accountant of the District.

(l) The holder of an endorsement of a certificate of certified public accountant, in full force and effect, shall have all of the privileges of the holder of a certificate of certified public accountant issued under this section and shall be subject to the provisions of this chapter.

(m) The Board shall maintain a record of certificates, endorsements and permits to practice issued under the authority of this chapter. (Mar. 16, 1978, D.C. Law 2-59, § 8, 24 DCR 5975.)

Legislative History of Law 2-59. See note to § 2-941.

Section referred to in sections. 2-943, 2-945, 2-948, 2-953, 2-954, 2-955.

§ 2-948. Temporary certificate and permit as a certified public accountant.

If an applicant for a certificate and permit as a certified public accountant meets all of the requirements for the certificate and permit (other than the requirement of section 2-947 (a) (3) that the applicant be a resident of the District or have a place of business therein or, if an employee, be regularly employed therein) the Board may, in its discretion, issue to the applicant a temporary certificate and permit as a certified public accountant which shall be effective only until the Board notifies the applicant that his or her application has been either approved or rejected. In no event shall such a temporary certificate or permit be in effect for more than six (6) months after the date of its issuance. (Mar. 16, 1978, D.C. Law 2-59, § 9, 24 DCR 5975.)

Legislative History of Law 2-59. See note to § 2-941.

§ 2-949. Public accountants — Registration thereof.

(a) Any person who (1) holds himself or herself out to the public as a public accountant and is engaged as a principal (as distinguished from an employee) within the District on the effective date of this chapter in the full-time practice of public accounting; and (2) is a resident of the District or has a place of business therein; and (3) is of good moral character may, within ninety (90) calendar days after the effective date of this chapter, register with the Board as a public accountant.

(b) The Board by regulations may provide for the registration of persons under subsection (a) of this section who, prior to the effective date of this chapter, were in practice but due to extenuating circumstances were not in practice on the effective date of this chapter.

(c) Any individual registered under subsection (b) of this section who holds a permit issued under section 2-954 shall be styled and known as a “public accountant”.

(d) Nothing in this chapter shall be construed to prohibit any person who has registered pursuant to this section, but who does not hold a valid permit issued under section 2-954, from assuming or using the title or designation “public accountant”, or the abbreviation “PA”, or any other title, designation, words, letters, abbreviation, sign, card or device tending to indicate that the person is a public accountant: Provided, that:

(1) the Board has not revoked, suspended or refused to renew a permit previously issued to the person for any cause specified in section 2-955;

(2) the assumption or use of the title or designation is not incident to the practice of public accountancy; and

(3) such assumption or use is not in conjunction with or incident to any opinion or certificate within the purview of sections 2-945 (f) or 2-945 (g).

(Mar. 16, 1978, D.C. Law 2-59, § 10, 24 DCR 5975.)

Emergency Act Amendment.

1978 — For temporary amendment of subsection (a), see sec. 2 of the Public Accountancy Emergency Act of 1978 (D.C. Act 2-219, July 5, 1978, 25 DCR 1385).

Legislative History of Law 2-59. See note to § 2-941.

Section referred to in sections. 2-943, 2-947, 2-954, 2-955.

§ 2-950. Foreign accountants — Registration thereof.

The Board may, in its discretion, permit the registration of any person of good moral character who is the holder in good standing of a certificate, license or degree in a foreign country which constitutes a recognized qualification for the practice of public accounting in that country. A person so registered shall use only the title under which he or she is generally known in his or her own country, followed by the name of the country from which the certificate, license or degree was received. (Mar. 16, 1978, D.C. Law 2-59, § 11, 24 DCR 5975.)

Legislative History of Law 2-59. See note to § 2-941.

Section referred to in sections. 2-946, 2-953, 2-954.

§ 2-951. Partnerships and corporations composed of certified public accountants — Registration thereof.

(a) A partnership engaged in the District in the practice of public accounting may register with the Board as a partnership of certified public accountants if it meets the following requirements:

(1) at least one (1) general partner thereof must be a certified public accountant of the District in good standing;

(2) each partner hereof must be a certified public accountant of a state in good standing; and

(3) at least one (1) partner or the resident manager in charge of an office of the partnership in the District and each partner thereof personally engaged within the District in the practice of public accounting as a member thereof must be a certified public accountant of the District in good standing.

(b) A corporation organized for the practice of public accounting may register with the Board as a corporation of certified public accountants if it is duly registered under the District of Columbia Professional Corporation Act (D.C. Code, sec. 29-1101 et seq.) and is in compliance with such regulations as may be prescribed for such corporations.

(c) A partnership or corporation which is registered pursuant to this section and which holds a permit issued under section 2-954 may use the words “certified public accountants” or the abbreviation “CPA” in connection with its partnership or corporate name. Notification shall be given the Board within one (1) month after the admission or withdrawal of a partner or shareholder in practice in the District from any partnership or corporation so registered. (Mar. 16, 1978, D.C. Law 2-59, § 12, 24 DCR 5975.)

Legislative History of Law 2-59. See note to § 2-941.

Section referred to in sections. 2-945, 2-954.

§ 2-952. Partnerships and corporations composed of public accountants — Registration thereof.

(a) A partnership engaged in the District in the practice of public accounting may register with the Board as a partnership of public accountants if it meets the following requirements:

(1) at least one (1) general partner thereof is a certified public accountant or a public accountant of the District in good standing;

(2) each partner thereof personally engaged within the District in the practice of public accounting as a member of the partnership must be a certified public accountant or a public accountant of the District in good standing; and

(3) at least one (1) partner or the resident manager in charge of an office of a firm in the District must be a certified public accountant or a public accountant of the District in good standing.

(b) A corporation organized for the practice of public accounting may be formed under the “District of Columbia Professional Corporation Act” (D.C. Code, sec. 29-1101 et seq.) and may register with the Board as a corporation of public accountants. The corporation must be in compliance with such other regulations pertaining to corporations practicing public accounting in the District as the Board may prescribe.

(c) The application for registration must be made upon the affidavit of a general partner or shareholder who holds a permit to practice in the District as a certified public accountant or as a public accountant. The Board shall in each case determine whether the applicant is eligible for registration. A partnership or corporation which is so registered and which holds a permit issued under section 2-954 may use the words “public accountants” in connection with its partnership or corporate name. Notification shall be given the Board within one (1) month after the admission to or withdrawal of a partner or shareholder from any partnership or corporation so registered. (Mar. 16, 1978, D.C. Law 2-59, § 13, 24 DCR 5975.)

Legislative History of Law 2-59. See note to § 2-941.
Section referred to in sections. 2-945, 2-954.

§ 2-953. Offices — Registration thereof.

(a) Each office established or maintained in the District for the practice of public accounting by a certified public accountant, or partnership or corporation of certified public accountants; or by a public accountant or a partnership or corporation of public accountants; or by one registered under section 2-950 shall be registered annually with the Board. Each such office shall be under the direct supervision of at least one (1) partner or the resident manager who may be either a principal, a shareholder or a staff employee holding a valid permit under section 2-954: Provided, that the title or designation “certified public accountant” or the abbreviation “CPA” shall not be used in connection with such office unless the partner or resident manager is the holder of a certificate as a certified public accountant issued under section 2-947 and a permit issued under section 2-954, both of which are in full force and effect. Such partner or resident manager may serve in such capacity at one (1) office only.

(b) The Board shall by regulation prescribe the procedure to be followed in effecting such registrations. (Mar. 16, 1978, D.C. Law 2-59, § 14, 24 DCR 5975.)

Legislative History of Law 2-59. See note to § 2-941.
Section referred to in sections. 2-945, 2-954.

§ 2-954. Annual permits to practice.

(a) Permits to engage in the practice of public accounting in the District shall be issued by the Board to holders of the certificates of certified public accountant issued under section 2-947 who have furnished evidence satisfactory to the Board of compliance with the requirements of subsection (b) of this section and to persons, partnerships and corporations registered under sections 2-949, 2-950, 2-951 and 2-952: Provided, that all offices in the District of the certificate holder or registrant are maintained and registered as required under section 2-953 and: Provided, further, that holders of certificates issued pursuant to section 2-947 may be required as a condition of the issuance of a permit pursuant to this section to demonstrate, in accordance with the regulations issued by the Board, experience of not fewer than two (2) years in either:

(1) auditing books and accounts of other persons in accordance with generally accepted auditing standards;

(2) reviewing financial statements and supporting material covering the financial conditions and operations of private business entities to determine the reliability and fairness of the financial reporting and compliance with generally accepted accounting principles;

(3) such other experience including auditing and accounting experience in a governmental agency as the Board in its discretion regards as qualifying experience under the facts and circumstances of individual cases; or

(4) any combination of the foregoing.

(b) All permits to practice shall expire on the day of the year set by the Mayor and may be renewed annually for a period of one (1) year by certificate holders and registrants in good standing. The failure of a certificate holder or registrant to apply for an annual permit to practice within three (3) years from either the expiration date of the permit to practice last obtained or renewed or the date upon which the certificate holder or registrant was granted his or her certificate or registration (if no permit was ever issued to him or her) shall deprive the person of the right to renew or have issued such permit, unless the Board in its discretion determines the failure to have been due to reasonable cause or excusable neglect. A permit to practice shall be issued, however, if the applicant satisfied the requirements for the initial issuance of the permit.

(c) After the Board promulgates regulations establishing continuing education requirements, as authorized pursuant to section 2-943 (i) (3), applications for renewal shall be accompanied by such evidence of compliance therewith as the Board shall prescribe. The failure of an applicant for the renewal of an annual permit to furnish such evidence shall constitute cause under section 2-955 for the revocation, suspension or refusal to renew the permit in a proceeding under section 2-957, unless the Board in its discretion determines that the failure was a result of a reasonable cause or an excusable neglect. The Board in its discretion may renew an annual permit to practice, despite the failure to furnish evidence of the satisfaction of the requirements of continuing education, upon the condition that the applicant will follow a satisfactory program or schedule of continuing education. In issuing rules, regulations, and individual orders with respect to the requirements of continuing education, the Board in its discretion may, among other things, use and rely upon guidelines and pronouncements of recognized educational and professional associations; prescribe for content, duration, and organization of courses; take into account the accessibility to applicants of such continuing education as the Board may require and any impediments to the interstate practice of public accountancy which may result from differences in such requirements in the states; and provide for the relaxation or suspension of such requirements in instances of individual hardship. (Mar. 16, 1978, D.C. Law 2-59, § 15, 24 DCR 5975.)

Legislative History of Law 2-59. See note to § 2-941.

Section referred to in sections. 2-943, 2-945, 2-946, 2-947, 2-949, 2-951, 2-952, 2-953, 2-955, 2-956.

§ 2-955. Revocation or suspension of certificate or registration or permit.

After a notice and hearing as provided for in section 2-957, the Board may:

(1) revoke or suspend, for a period not to exceed three (3) years, any certificate issued under section 2-947 or any registration granted under section 2-949;

(2) revoke, suspend or refuse to renew any permit issued under section 2-954; or

(3) censure the holder of any such permit for any one (1) or any combination of the following causes:

(A) fraud or deceit in obtaining a certificate, registration permit or other benefit under this chapter;

(B) dishonesty, fraud or gross negligence in the practice of public accounting;

(C) the violation of any of the provisions of section 2-945;

(D) the violation of a rule of professional conduct promulgated by the Board under the authority granted by this chapter;

(E) the conviction of a felony under the laws of any state or of the United States;

(F) the conviction of any crime, an element of which is dishonesty or fraud, under the laws of any state or of the United States;

(G) the cancellation, revocation, suspension or refusal to renew the holder's authority to practice as a certified public accountant or a public accountant by any state for any cause other than the failure to pay an annual registration fee in such state;

(H) the suspension or revocation of the holder's right to practice before any state or federal agency;

(I) with regard to the annual permit to practice, the failure of:

(i) a certificate holder or registrant to obtain an annual permit under section 2-954 within the time specified in section 2-954 (b); or

(ii) a holder of a valid permit to furnish evidence of satisfaction of the requirements of continuing education as required by the Board under section 2-954 or to meet any conditions with respect to continuing education which the Board may have ordered concerning the certificate holder under that section; or

(J) conduct discreditable to the public accounting profession.

(Mar. 16, 1978, D.C. Law 2-59, § 16, 24 DCR 5975.)

Legislative History of Law 2-59. See note to § 2-941.

Section referred to in sections. 2-947, 2-949, 2-954, 2-956.

§ 2-956. Revocation or suspension of partnership's or corporation's registration or permit.

(a) After a notice and hearing as provided in section 2-957, the Board shall revoke the registration and permit to practice of a partnership or corporation if at any time it does not meet all the qualifications prescribed by the section of this chapter under which it qualified for registration.

(b) After a notice and hearing as provided in section 2-957, the Board may:

(1) revoke or suspend the registration of a partnership or corporation;

(2) revoke, suspend or refuse to renew the permit of a partnership or corporation to practice under section 2-954; or

(3) censure the holder of any such permit for any of the causes enumerated in section 2-955 or for any of the following additional causes:

(A) the revocation or suspension of the certificate of registration or the revocation or suspension or refusal to renew the permit to practice of any partner or shareholder; or

(B) the cancellation, revocation, suspension or refusal to renew the authority of the partnership or corporation, or any partner or shareholder thereof, to practice public accounting in any state for any cause other than the failure to pay an annual registration fee in such state.

(Mar. 16, 1978, D.C. Law 2-59, § 17, 24 DCR 5975.)

Legislative History of Law 2-59. See note to § 2-941.

§ 2-957. Hearings before the board — Periodic review.

(a) The Board shall adopt and prescribe administrative procedures governing the denial, suspension or revocation of any certificate, permit, endorsement or registration. Such procedures shall be consistent with the contested case provisions of the District of Columbia Administrative Procedure Act (D.C. Code, sec. 1-1509), including reasonable notice and an opportunity for a hearing.

(b) The Board is authorized and empowered in connection with any hearing pursuant to its authority under this section to administer oaths and to subpoena any necessary witnesses, books, papers, records and documents. (Mar. 16, 1978, D.C. Law 2-59, § 18, 24 DCR 5975.)

Legislative History of Law 2-59. See note to § 2-941.
Section referred to in sections. 2-954, 2-955, 2-956.

§ 2-958. Reinstatement.

- (a) Upon an application in writing and after a hearing pursuant to a notice, the Board may:
- (1) issue a new certificate to a certified public accountant whose certificate has been revoked; or
 - (2) permit the re-registration of anyone whose registration has been revoked; or
 - (3) reissue or modify the suspension of any permit to practice public accounting which has been revoked or suspended.
- (b) The burden shall be upon the applicant to show that he or she qualifies for reinstatement. (Mar. 16, 1978, D.C. Law 2-59, § 19, 24 DCR 5975.)

Legislative History of Law 2-59. See note to § 2-941.

§ 2-959. Injunction against unlawful acts.

Whenever, in the judgment of the Board, any person has engaged or is about to engage in acts or practices which constitute or will constitute a violation of section 2-945, the Board may make application to the appropriate court for an order enjoining such acts or practices and upon a showing by the Board that such person has engaged or is about to engage in any such acts or practices, an injunction, restraining order or such other order as may be appropriate shall be granted by such court. (Mar. 16, 1978, D.C. Law 2-59, § 20, 24 DCR 5975.)

Legislative History of Law 2-59. See note to § 2-941.

§ 2-960. Penalty.

Any person who violates any provision of section 2-945 shall be guilty of a misdemeanor and upon conviction thereof shall be subject to a fine of not more than five hundred dollars (\$500) or to imprisonment for not more than one (1) year, or to both such fine and imprisonment. Whenever the Board has reason to believe that any person is liable to punishment under this section, it may certify the facts to the Corporation Counsel of the District of Columbia who may, in his or her discretion, cause appropriate proceedings to be brought. (Mar. 16, 1978, D.C. Law 2-59, § 21, 24 DCR 5375.)

Legislative History of Law 2-59. See note to § 2-941.

§ 2-961. Single act evidence of practice.

The display or uttering by a person of a card, sign, advertisement or other printed, engraved or written instrument or device bearing a person’s name in conjunction with the words “certified public accountant” or any abbreviation thereof, or “public accountant” or any abbreviation thereof shall be prima facie evidence in any action brought under this chapter that the person whose name is so displayed caused or procured the display or uttering of such card, sign, advertisement or other printed, engraved or written instrument or device and that such person is holding himself or herself out to be a certified public accountant or a public accountant. In any such case, evidence of the commission of a single act prohibited by this chapter shall be sufficient to justify an injunction or a conviction without evidence of a general course of conduct. (Mar. 16, 1978, D.C. Law 2-59, § 22, 24 DCR 5975.)

Legislative History of Law 2-59. See note to § 2-941.

§ 2-962. Ownership of an accountant's working papers.

All statements, records, schedules, working papers and memoranda made by a certified public accountant or public accountant incidental to or in the course of professional service to a client shall be and remain the property of such accountant, in the absence of an express agreement between the accountant and the client to the contrary. No such statement, record, schedule, working paper, or memorandum shall be sold, transferred or bequeathed without the consent of the client or the client's personal representative or assignee to anyone other than one (1) or more surviving partners of the accountant or to the accountant's corporation. (Mar. 16, 1978, D.C. Law 2-59, § 23, 24 DCR 5975.)

Legislative History of Law 2-59. See note to § 2-941.

§ 2-963. Construction.

If any provision of this chapter or the application thereof to anyone or to any circumstances is held invalid, the remainder of the chapter and the application of the provision to others or other circumstances shall not be affected thereby. (Mar. 16, 1978, D.C. Law 2-59, § 24, 24 DCR 5975.)

Legislative History of Law 2-59. See note to § 2-941.

§ 2-964. Effect of repeal of prior act.

The District of Columbia Certified Public Accountancy Act of 1966 (D.C. Code, sec. 2-911 et seq.) is hereby repealed: Provided, that nothing contained in this chapter shall invalidate or affect any action taken under any law in effect prior to the effective date of this chapter or invalidate or affect any proceeding instituted under such law before the effective date of this chapter: Provided, further, that the Board of Accountancy established pursuant to the District of Columbia Certified Public Accountancy Act of 1966 (D.C. Code, sec. 2-911 et seq.) shall continue to exercise the powers, functions and duties vested in it under such act until five (5) members of the Board are duly appointed and officially take office. (Mar. 16, 1978, D.C. Law 2-59, § 25, 24 DCR 5975.)

Legislative History of Law 2-59. See note to § 2-941.

Compiler's changes. This section consists of subsection (a) of section 25 of D.C. Law 2-59 only. Subsection (b) of

said law amended title 5 of DCRR and is, therefore, not set out here.

§ 2-965. Effective date.

This chapter shall apply on and after June 15, 1978. (Mar. 16, 1978, D.C. Law 2-59, § 26, 24 DCR 5975.)

Legislative History of Law 2-59. See note to § 2-941.

Compiler's changes. This section consists of subsection (a) of section 26 of D.C. Law 2-59 only. Subsection (b) of said section provided for the act taking effect pursuant to

section 1-147 (c). The actual date on which the law applied has been inserted for "the ninety-first day after its effective date."

CHAPTER 17.—ARMORY BOARD*Subchapter II.—District of Columbia Stadium***§ 2-1723. Authority of Board outlined.**

NOTES TO DECISIONS

Parking lot at the Stadium is a Federal area within the meaning of 40 U.S.C. § 804, relating to the Secretary of the Interior’s provision of transportation services between federal areas. *United States v. District of Columbia* (1977, 571 F.2d 651, 187 U.S. App. D.C. 217).

CHAPTER 24.—SECURITY AGENTS AND BROKERS

§ 2-2413. Civil liabilities.

NOTES TO DECISIONS

Statute of limitations applicable in federal securities fraud cases. — When a private action is brought under § 10(b) of the federal Securities Exchange Act of 1934 (15 U.S.C. § 78j(b)) and § 17(a) of the federal Securities Act of 1933 (15 U.S.C. § 77q(a)), the two-year period of this section is the applicable statute of limitations. *Wachovia Bank & Trust Co. v. National Student Marketing Corp.* (1978, 461 F. Supp. 999).

Federal tolling doctrine. — Where federal securities law violations are alleged, the statute of limitations does not run until a plaintiff, in the exercise of reasonable diligence, discovered or should have discovered the fraudulent activity underlying his cause of action. *Wachovia Bank & Trust Co. v. National Student Marketing Corp.* (1978, 461 F. Supp. 999).

The statutory limitations period will not await a plaintiff’s leisurely discovery of the full details of the fraudulent scheme but begins to run when he possesses sufficient information which, in the exercise of due

diligence, warrants further inquiry. *Wachovia Bank & Trust Co. v. National Student Marketing Corp.* (1978, 461 F. Supp. 999).

A statute of limitations does not become operative when a plaintiff discovers all aspects of a fraudulent scheme but rather from the time when a clue to the facts, if pursued diligently, would lead to an uncovering of the general fraudulent scheme. *Wachovia Bank & Trust Co. v. National Student Marketing Corp.* (1978, 461 F. Supp. 999).

Class action tolling doctrine. — Filing of a class action complaint tolls the running of the statute of limitations for all purported class members who timely seek intervention after the lower court has found the asserted class too small to certify. *Wachovia Bank & Trust Co. v. National Student Marketing Corp.* (1978, 461 F. Supp. 999).

Class action tolling doctrine did not apply to plaintiffs who had opted out of the class action. *Wachovia Bank & Trust Co. v. National Student Marketing Corp.* (1978, 461 F. Supp. 999).

CHAPTER 25.—CRIMINAL JUSTICE SUPERVISORY BOARD.

Sec.	Sec.
2-2501. Definitions.	2-2504. Meetings; quorums; committees; bylaws.
2-2502. Findings and purpose.	2-2505. Powers and duties.
2-2503. Criminal Justice Supervisory Board and Office of Criminal Justice Plans and Analysis; membership; staff.	2-2506. Reports.
	2-2507. Authorization of funds.

§ 2-2501. Definitions.

For the purposes of this chapter:

- (a) “Board” means the Criminal Justice Supervisory Board established under section 2-2503
- (b).
- (b) “Crime Control Act” means the Omnibus Crime Control and Safe Streets Act of 1968, approved June 19, 1968 (82 Stat. 197; 42 U.S.C. § 3701).
- (c) “JPC” means the Judicial Planning Committee established pursuant to section 203 (c) of the Crime Control Act of 1976, approved October 15, 1976 (90 Stat. 2407; 42 U.S.C. 3723).
- (d) “Juvenile Justice Act” means the Juvenile Justice and Delinquency Prevention Act of 1974, approved September 7, 1974 (88 Stat. 1109; 42 U.S.C. § 5601).
- (e) “OCJPA” means the Office of Criminal Justice Plans and Analysis established pursuant to section 2-2503.
- (f) “Youth” means a person who has not reached the age of twenty-one (21) years.
- (g) “Senior citizen” means any person who has reached the age of sixty (60) years. (Sept. 13, 1978, D.C. Law 2-107, § 2, 25 DCR 1391.)

Legislative History of Law 2-107. Law 2-107 was introduced in Council and assigned Bill No. 2-211, which was referred to the Committee on the Judiciary. The Bill was adopted on first, amended first and second readings on May 16, 1978, May 30, 1978 and June 13, 1978, respectively. There being no action by the Mayor, it was assigned Act No. 2-222 and transmitted to both Houses of Congress for its review.

Short title. The first section of the act of Sept. 13, 1978, D.C. Law 2-107, 25 DCR 1391, provided: "That this act may

be cited as the 'Criminal Justice Supervisory Board Act of 1978.'"

Repeal of Mayor's Orders. Section 9 of act Sept. 13, 1978, D.C. Law 2-107, 25 DCR 1391, provided for the repeal of Mayor's Orders 77-52, effective April 1, 1977; 77-52A, effective April 19, 1977; 77-52B, effective May 17, 1977; and 78-61, effective March 23, 1978.

§ 2-2502. Findings and purpose.

The Council of the District of Columbia finds and declares that:

- (a) crime and delinquency are complex social phenomena requiring the attention and efforts of the criminal justice system, local government and private citizens alike;
 - (b) the establishment of appropriate goals, objectives and standards for the reduction of crime and delinquency and for the administration of justice must be a priority concern;
 - (c) the functions of the criminal justice system must be coordinated more efficiently and effectively;
 - (d) the full and effective use of resources affecting local criminal justice systems requires the complete cooperation of local government agencies; and
 - (e) training, research, evaluation, technical assistance and public education activities must be encouraged and focused on the improvement of the criminal justice system and the generation of new methods for the prevention and reduction of crime and delinquency.
- (Sept. 13, 1978, D.C. Law 2-107, § 3, 25 DCR 1391.)

Legislative History of Law 2-107. See note to § 2-2501.

§ 2-2503. Criminal Justice Supervisory Board and Office of Criminal Justice Plans and Analysis; membership; staff.

(a) There is hereby established within the Executive Branch of the District of Columbia government a Criminal Justice Supervisory Board which shall serve as the law enforcement and criminal justice planning agency for the District of Columbia in accordance with the terms of the Crime Control Act. There is also hereby created an Office of Criminal Justice Plans and Analysis which shall serve as the staff of the Board.

- (b) The Criminal Justice Supervisory Board shall consist of forty (40) members, as follows:
- (1) the Mayor;
 - (2) the Chairman of the Council of the District of Columbia;
 - (3) the Chief Judge of the District of Columbia Court of Appeals;
 - (4) the Chief Judge of the Superior Court of the District of Columbia;
 - (5) the Corporation Counsel of the District of Columbia;
 - (6) the Chairperson of the Committee on the Judiciary of the Council of the District of Columbia;
 - (7) the Executive Officer of the District of Columbia Courts;
 - (8) five (5) persons appointed by the Mayor from a list of no less than fifteen (15) nominees submitted by the Chief Judge of the District of Columbia Court of Appeals;
 - (9) the United States Attorney for the District of Columbia (if he desires to serve);
 - (10) the Chief of the Metropolitan Police Department;
 - (11) the Director of the Department of Human Resources;
 - (12) the Director of the Mayor's Office of Budget and Management Systems;
 - (13) the Director of the Office of Youth Advocacy;
 - (14) the Director of the District of Columbia Department of Corrections;
 - (15) the Director of the District of Columbia Public Defender Service;
 - (16) the Director of the District of Columbia Bail Agency;

(17) the Chairperson of the District of Columbia Board of Parole;

(18) the Director of the District of Columbia Municipal Planning Office;

(19) the Chairperson of the District of Columbia Commission on the Status of Women;

(20) the Chairperson of the state advisory group of the District of Columbia established pursuant to section 223 of the Juvenile Justice Act;

(21) four (4) members of the state advisory group of the District of Columbia established pursuant to section 223 of the Juvenile Justice Act: Provided, that the four (4) members, other than the Chairperson of such state advisory group, shall be chosen by a majority of the members of such state advisory group and three (3) of the four (4) chosen members shall not be employees of the District of Columbia government;

(22) five (5) persons appointed by the Mayor: Provided, that such persons shall not be employed by the District of Columbia government, one (1) of whom shall be a youth and two (2) of whom shall be senior citizens;

(23) four (4) persons appointed by the Chairman of the Council of the District of Columbia with the consent of the Council: Provided, that such persons shall not be employed by the District of Columbia government, one (1) of whom shall be a youth and one (1) of whom shall be a senior citizen; and

(24) three (3) persons appointed by the Chairperson of the Committee on the Judiciary of the Council of the District of Columbia with the consent of the Committee: Provided, that such persons shall not be employed by the District of Columbia government, one (1) of whom shall be a youth and one of whom shall be a senior citizen.

(c) An alternate of a member of the Board may be designated by each member: Provided, that such designation shall be in writing and, with respect to a member who serves on the Board by virtue of an office in the government of the District of Columbia, an alternate shall be a ranking subordinate of the member. In the event that a nongovernment member, appointed pursuant to paragraphs (21) through (24) of subsection (b) of this section, is absent from three (3) consecutive meetings of the Board or any of its committees or subcommittees, the Chairperson of the Board shall request that the Mayor of the District of Columbia (hereinafter referred to as the “Mayor”), the Chairman of the Council, the Chairperson of the Committee on the Judiciary of the Council or the state advisory group established pursuant to section 223 of the Juvenile Justice Act, as the case may be, replace such appointed member.

(d) Members serving pursuant to paragraphs (21) through (24) of subsection (b) of this section shall serve for two (2) year terms and may be reappointed for no more than one (1) additional consecutive term. Members serving pursuant to paragraph (8) of subsection (b) of this section shall serve at the pleasure of the Chief Judge of the District of Columbia Court of Appeals. The terms of all other members shall be concurrent with their service in the office from which they derive their membership.

(e) Should any member cease to be an officer of the unit or agency of government which he is appointed to represent, his membership on the Criminal Justice Supervisory Board shall terminate immediately and a new member shall be appointed in the same manner as his predecessor to fill the unexpired term. Vacancies occurring in memberships created by items (8) and (22) through (24) of subsection (b) of this section, except those by the expiration of a term, shall be filled for the balance of the unexpired term in the same manner as the original appointment within thirty (30) days of the vacancy.

(f) The Mayor shall appoint a Chairperson of the Criminal Justice Supervisory Board. A vice-chairperson shall be selected by the Board from among its members.

(g) A member of the Board is not entitled to a salary for duties performed as a member of the Board. Each member is entitled to reimbursement for travel and other necessary expenses incurred in the performance of official Board duties.

(h) The Mayor shall appoint an Executive Director of the Office of Criminal Justice Plans and Analysis who shall serve at the pleasure of the Mayor and who shall be paid such compensation as the Mayor may determine. The Executive Director may employ such personnel and contract for such consulting services, as may be necessary, to carry out the purposes of this chapter and for which sufficient appropriation is made. (Sept. 13, 1978, D.C. Law 2-107, § 4, 25 DCR 1391.)

Legislative History of Law 2-107. See note to § 2-2501.
Section referred to in section. 2-2501.

Commission for Women by virtue of D.C. Law 2-109 (D.C. Code, sec. 2-2601 et seq.).

Compiler's note. The District of Columbia Commission on the Status of Women is now the District of Columbia

§ 2-2504. Meetings; quorums; committees; bylaws.

(a) The Criminal Justice Supervisory Board shall meet at least once every ninety (90) days and at such other times designated by the chairperson or a majority of the Board.

(b) A simple majority of the membership shall constitute a quorum for the Criminal Justice Supervisory Board and for its committees or subcommittees.

(c) In its developing and administering an annual comprehensive criminal justice plan for the District of Columbia, the Board shall establish committees or subcommittees comprised of members of the Board and such other persons as the Board deems advisable and feasible. The Board shall also determine the chairperson for each committee. The committee structure of the Board shall include but not be limited to:

(1) a committee on the courts comprised of the JPC and designed to carry out the purposes of section 203 of the Crime Control Act;

(2) a committee on juvenile justice comprised of the state advisory group of the District of Columbia established pursuant to section 223 of the Juvenile Justice Act and designed to develop the juvenile justice component of the annual comprehensive criminal justice plan in accordance with the Juvenile Justice Act; and

(3) an appeals committee designed to consider appeals from any action of the Board denying all or part of any funds requested in any subgrant application to conduct a project for which funds are available.

(d) Except for a committee on the courts and a committee on juvenile justice, each committee of the Board shall contain: (1) at least one (1) member from or appointed by the Executive Branch of the District of Columbia government; (2) at least one (1) member from or appointed by the Council of the District of Columbia; (3) at least one (1) member from the District of Columbia courts; and (4) a sufficient number of members who are not employed by the District of Columbia government to comprise at least one-third ($\frac{1}{3}$) of the total membership of the committee or subcommittee. In the event that an executive committee is established by the Board, such executive committee shall include in its membership the same proportion of members representing the judiciary and members representing the juvenile justice advisory group as the total number of each such class of members bears to the total membership of the Board.

(e) Subject to the provisions of paragraphs (1), (2) and (3) of subsection (c) of this section, the Board shall ensure that, prior to the adoption by the Board of an annual comprehensive criminal justice plan, it shall have received and considered recommendations from at least one (1) of its committees or subcommittees with respect to what ought to be the contents of the plan concerning: (1) the administration of justice; (2) the prevention of crime; (3) detection of crime and apprehension of offenders; (4) prosecution and defense; and (5) sentencing and correctional treatment of offenders. In addition, the Board shall ensure that, prior to its making grant awards in accordance with an approved annual comprehensive criminal justice plan, the Board shall have received and considered recommendations from at least one (1) of its committees or subcommittees with respect to all potential subgrant award recipients who qualify in accordance with the Board's rules and procedures governing subgrant awards.

(f) The Board shall promulgate rules of procedure governing its operations which comply with the District of Columbia Administrative Procedure Act (D.C. Code, sec. 1-1501 et seq.), and with the Advisory Neighborhood Commissions Act of 1975 (D.C. Code, sec. 1-171a et seq.). (Sept. 13, 1978, D.C. Law 2-107, § 5, 25 DCR 1391.)

Legislative History of Law 2-107. See note to § 2-2501.

§ 2-2505. Powers and duties.

The Board shall:

(a) advise and assist the Mayor, the District of Columbia Courts and the Council of the

District of Columbia in developing policies, plans, programs and budgets for improving the coordination, administration and effectiveness of the criminal justice system in the District of Columbia;

(b) approve all components of the annual comprehensive criminal justice plan prepared pursuant to the Crime Control Act and submit such plan to the Council of the District of Columbia for its advisory review of the goals, priorities and policies contained therein prior to the ultimate submission of such plan to the Law Enforcement Assistance Administration, United States Department of Justice;

(c) include in each annual comprehensive criminal justice plan a statement of the fiscal impact each component of such plan would likely have, if any, on the fiscal budget of the District of Columbia for the next five (5) years;

(d) assure the participation of citizens, community organizations and juvenile justice advocates at all levels of the planning process;

(e) recommend goals, priorities and standards for the reduction of crime and the improvement of the administration of justice in the District of Columbia;

(f) recommend criminal justice legislation to the Mayor, the Council of the District of Columbia and the Congress, where appropriate;

(g) ensure that the annual judicial plan developed by the JPC is implemented to the extent that it is in conformity with the comprehensive plan for the improvement of law enforcement and criminal justice in accordance with section 304 (b) of the Crime Control Act;

(h) encourage local and regional comprehensive criminal justice planning efforts;

(i) monitor and evaluate programs and projects, funded in whole or in part by the District of Columbia government, aimed at reducing crime and delinquency and improving the administration of justice;

(j) cooperate with and render technical assistance to agencies and units of the District of Columbia government, and public or private agencies relating to the criminal justice system;

(k) have the authority to collect from any District of Columbia governmental entity information, data, reports, statistics or such other material which is necessary to carry out the functions of the Office of Criminal Justice Plans and Analysis consistent with the District of Columbia Self-Government and Governmental Reorganization Act; and

(l) perform such other duties as may be necessary to carry out the purposes of this chapter. (Sept. 13, 1978, D.C. Law 2-107, § 6, 25 DCR 1391.)

Legislative History of Law 2-107. See note to § 2-2501.

§ 2-2506. Reports.

(a) Within ninety (90) days of the close of each fiscal year, the Criminal Justice Supervisory Board shall submit an annual report to the Mayor and to the Council of the District of Columbia concerning its work during the preceding fiscal year.

(b) The OCJPA through the Board may submit other studies, evaluations, crime data analyses and reports to the Mayor or the Council of the District of Columbia as deemed appropriate or as requested by the Mayor or the Council. (Sept. 13, 1978, D.C. Law 2-107, § 7, 25 DCR 1391.)

Legislative History of Law 2-107. See note to § 2-2501.

§ 2-2507. Authorization of funds.

There are hereby authorized to be appropriated such funds as may be necessary for the administration of this chapter. In addition, the Mayor shall reprogram and transfer to the Office of Criminal Justice Plans and Analysis, as constituted by this chapter, any and all property, records and unexpected balances of appropriated funds for the Office of Criminal Justice Plans and Analysis as created by Mayor's Orders 77-52 A and B. (Sept. 13, 1978, D.C. Law 2-107, § 8, 25 DCR 1391.)

Legislative History of Law 2-107. See note to § 2-2501.

CHAPTER 26.—COMMISSION FOR WOMEN

Sec.	Sec.
2-2601. Statement of purpose.	2-2603. Powers of the Commission.
2-2602. Establishment of the Commission.	2-2604. Administration.

§ 2-2601. Statement of purpose.

It is the purpose of this chapter to support programs directed toward evaluating and improving the status of women in the District of Columbia by establishing the Commission for Women. (Sept. 22, 1978, D.C. Law 2-109, § 2, 25 DCR 1456.)

Legislative History of Law 2-109. Law 2-109 was introduced in Council and assigned Bill No. 2-236, which was referred to the Committee on Public Services and Consumer Affairs. The Bill was adopted on first and second readings on May 30, 1978 and June 13, 1978, respectively. Signed by the Mayor on July 13, 1978, it was

assigned Act No. 2-230 and transmitted to both Houses of Congress for its review.

Short title. The first section of act Sept. 22, 1978, D.C. Law 2-109, 25 DCR 1456, provided: "That this act may be cited as the 'District of Columbia Commission for Women Act of 1978.' "

§ 2-2602. Establishment of the Commission.

- (a) There is hereby established in the District of Columbia a Commission for Women (hereinafter referred to as the "Commission"). The Commission shall be composed of twenty-one (21) members appointed by the Mayor of the District of Columbia (hereinafter referred to as the "Mayor"), with the advice and consent of the Council of the District of Columbia (hereinafter referred to as the "Council"), from among the residents of the District of Columbia with experience in the areas of public affairs and issues of particular interest and concern to women, representative by geographic area and reflective by race and age of the population of the District of Columbia. The Commission shall be the successor to the Commission on the Status of Women established by Organization Order No. 38, Commissioner's Order No. 73-94a, effective April 24, 1973 (hereinafter referred to as the "Commission on the Status of Women").
- (b) Members of the Commission shall be appointed to serve terms of three (3) years and shall serve until their successors are appointed. The present members of the Commission on the Status of Women shall be members of the Commission established by this chapter for the remainder of their current terms. A member of the Commission may be reappointed but may serve no more than two (2) consecutive full terms. Tenure on the Commission on the Status of Women shall count toward the consecutive two (2) full term limit on the Commission.
- (c) Whenever a vacancy occurs on the Commission, the Mayor, with the advice and consent of the Council, shall, within ninety (90) working days of such vacancy, appoint a successor to fill the unexpired portion of the term.
- (d) The Mayor shall designate from among the members appointed to the Commission, the Chairperson, who shall serve in that capacity at the pleasure of the Mayor.
- (e) All members of the Commission shall serve without compensation: Except, that expenses incurred by the Commission as a whole or by its individual members, when duly authorized, shall become an obligation against appropriated District of Columbia funds designated for that purpose.
- (f) The Mayor may remove, after notice and hearing, any member of the Commission for neglect of duty, incompetence, misconduct or malfeasance in office. (Sept. 22, 1978, D.C. Law 2-109, § 3, 25 DCR 1456.)

Legislative History of Law 2-109. See note to § 2-2601.

§ 2-2603. Powers of the Commission.

(a) The Commission shall conduct studies, review progress, develop, recommend and undertake action and initiate and conduct programs in areas including, but not limited to, the following:

(1) elimination of discrimination based on sex and elimination of sex role stereotyping and bias;

(2) public and private employment practices, including matters pertaining to hours, wages and working conditions;

(3) education;

(4) equality of rights and responsibilities of men and women under the law;

(5) new and expanded services for women to facilitate their optimal functioning as homemakers, wage-earners and citizens, including mental and physical health care, and the improvement of facilities for child care and youth development.

(b) The Commission is authorized to apply for and receive grants to fund its program activities in accordance with procedures relating to grants management.

(c) The Commission may accept private gifts and donations to carry out the purposes of this chapter.

(d) The Commission shall stimulate and encourage study and review of the status of women and may act as a clearinghouse for activities in the District of Columbia. (Sept. 22, 1978, D.C. Law 2-109, § 4, 25 DCR 1456.)

Legislative History of Law 2-109. See note to § 2-2601.

§ 2-2604. Administration.

(a) The Commission shall appoint an Executive Director who shall be the chief administrative officer of the Commission. The Executive Director shall report regularly to the Commission on staff activities. The Executive Director shall receive annual rate of compensation fixed in accordance with chapter 51 of Title 5 of the United States Code.

(b) Additional staff service for the Commission shall be supplied in accordance with positions and funding approved in the District of Columbia budget.

(c) The Commission is authorized to establish rules and procedures for the conduct of its business, including the election of officers other than the Chairperson, as it deems necessary.

(d) The Commission shall submit to the Mayor annual reports of its activities and the work carried on under its direction. (Sept. 22, 1978, D.C. Law 2-109, § 5, 25 DCR 1456.)

Legislative History of Law 2-109. See note to § 2-2601.

TITLE 4.—POLICE AND FIRE DEPARTMENTS

Chap.	Sec.
1. Metropolitan Police	4-101
5. Police and Firefighters Retirement and Disability	4-501
8. Salaries	4-801
10. Police and Firefighter Medical Care Recovery	4-1001
11. Registration of State Officials Entering District	4-1101

CHAPTER 1.—METROPOLITAN POLICE

§ 4-103. Appointments — Civil service rules made applicable — Classification.

NOTES TO DECISIONS

Cited in *Bethel v. Jefferson* (1978, 589 F.2d 631).

§ 4-121. Rules and regulations — Fine, suspension, or dismissal of police — Charges to be heard by trial board.

NOTES TO DECISIONS

Procedure in employment discrimination cases. — Since officers of the Metropolitan Police Department do not occupy positions in the competitive service, their avenue to the courts for claims of employment discrimination is 42 U.S.C. § 2000e-5, which calls for a charge filed first with the Equal Employment Opportunity Commission. *Bethel v. Jefferson* (1978, 589 F.2d 631).

§ 4-122. Trial board — Appointment — Hearings — Findings — Appeals — Existing rules and regulations ratified.

NOTES TO DECISIONS

Where officer appealed to Mayor, trial board's decision became simply a recommendation, not a final decision. *Bethel v. Jefferson* (1978, 589 F.2d 631).

§ 4-134. Records — General complaint files — Lost, missing, or stolen property — Personnel records of police.

NOTES TO DECISIONS

Cited in *In re Knable* (1977, 570 F.2d 957, 187 U.S. App. D.C. 48).

§ 4-135. Records open to public inspection.

NOTES TO DECISIONS

Cited in *In re Knable* (1977, 570 F.2d 957, 187 U.S. App. D.C. 48).

§ 4-137. Preservation and destruction of records.

NOTES TO DECISIONS

Cited in *Lively v. Cullinane* (1976, 451 F. Supp. 999).

§ 4-152. Custody of stolen, lost, or abandoned property.

NOTES TO DECISIONS

Cited in *United States v. Pannell* (D.C. 1978, 387 A.2d 736); *In re D.L.J.* (D.C. 1978, 383 A.2d 1081).

CHAPTER 5.—POLICE AND FIREFIGHTERS RETIREMENT AND DISABILITY

§ 4-526. Retirement for disability not incurred in performance of duty.

NOTES TO DECISIONS

Cited in *Arellano v. District of Columbia Police & Firemen's Retirement & Relief Bd.* (D.C. 1978, 384 A.2d 29).

§ 4-527. Retirement for disability while performing or not performing duty.

NOTES TO DECISIONS

Claimant has burden of establishing on-duty aggravation of his injury or disease, and he is not entitled to a favorable presumption upon a court's review of the evidence. *Arellano v. District of Columbia Police & Firemen's Retirement & Relief Bd.* (D.C. 1978, 384 A.2d 29).

Proof of proximate cause of disability. — Where a claimant makes a showing of a service-incurred injury, the opposing side must then offer evidence disproving the logical inference that the ensuing disability was the long-term result of such injury. *Arellano v. District of Columbia Police & Firemen's Retirement & Relief Bd.* (D.C. 1978, 384 A.2d 29).

Only if substantial evidence exists which could be said to disprove the inference of causation of a disability by an on-duty injury must a reviewing court uphold a finding by the Board that the government has met its burden of proof and dispelled the inference. *Arellano v. District of Columbia Police & Firemen's Retirement & Relief Bd.* (D.C. 1978, 384 A.2d 29).

Evidence insufficient to support Board's finding. — *Arellano v. District of Columbia Police & Firemen's Retirement & Relief Bd.* (D.C. 1978, 384 A.2d 29).

CHAPTER 8.—SALARIES

§ 4-823. Salary Schedules — Rates of basic compensation of officers and members of Metropolitan Police force and Fire Department.

Emergency Act Amendments.

1978 — For temporary adjustment of the rates of pay in the salary schedule, see secs. 101 and 201 of the District of Columbia Police, Firefighters' and Teachers' Salary Act Amendments Emergency Act of 1978 (D.C. Act 2-160, Mar. 15, 1978, 24 DCR 8080); secs. 2, 3 and 5 of the First Emergency District of Columbia Police, Firefighters' and Teachers' Salary Act Amendment of FY 1979 (D.C. Act 2-245, Aug. 1, 1978, 25 DCR 1499); and secs. 2, 3 and 5 of the Second Emergency District of Columbia Police, Firefighters' and Teachers' Salary Act Amendment of FY 1979 (D.C. Act 2-294, Nov. 7, 1979, 25 DCR 5085).

Increases in schedules and rates. Section 2 of act May 18, 1978, D.C. Law 2-76, 24 DCR 8067, provided:

"(a) (1) The Mayor of the District of Columbia shall ascertain the average percentage increase to be used by the President of the United States in adjusting rates of pay

(to be effective October 1, 1977) under section 5305 (a) (2) of title 5 of the United States Code, or whether the President of the United States intends to submit to the United States Congress an alternative plan with respect to pay adjustments under section 5305 (c) of title 5 of the United States Code, and the contents of the alternative plan of the President of the United States.

(2) The Mayor of the District of Columbia shall then adjust the rates of pay in each class and service step on the salary schedule in section 101 of the District of Columbia Police and Firemen's Salary Act of 1958, approved August 1, 1958 (72 Stat. 481; D.C. Code, sec. 4-823 (a)), on the first pay period after October 1, 1977 to reflect the average percentage increase given to General Schedule employees, or if the alternative plan of the President of the United States becomes effective as provided in section 5305 of title 5 of the United States

Code, the Mayor of the District of Columbia shall adjust the rates of pay to reflect the average percentage increase given to General Schedule employees under the alternative plan of the President of the United States. If the alternative plan of the President of the United States is disapproved by the United States Congress, the Mayor of the District of Columbia shall adjust such rates of pay to reflect the average percentage increase of the Presidential adjustments of rates of pay under section 5305 (m) of title 5 of the United States Code.

(3) The adjustments in the rates of pay made by the Mayor of the District of Columbia under this section shall be effective on and payable for the first day of the first pay period beginning on or after October 1, 1977, or the effective date of the alternative plan of the President of the United States, whichever is later.

(b) The rates of pay, which become effective under this act, shall be the rates of pay for each class and service step concerned as if those rates had been set by statute and shall remain in effect until amended by the Council of the District of Columbia.

(c) The rates of pay established under this act shall supersede and render inapplicable those corresponding rates of pay set prior to the effective date of the rates of pay set under this act.

(d) The rates of pay that take effect under this act shall be published in the District of Columbia Register.”

Section 3 of said act provided:

“(a) Retroactive compensation or salary shall be paid by reason of the amendments made by this act only in the case of an individual in the service of the District of Columbia government or of the United States (including service in the Armed Forces of the United States) on the effective date of this act, except that such retroactive compensation or salary shall be paid:

(1) to officers or members of the Metropolitan Police Department of the District of Columbia and the Fire

Department of the District of Columbia who retired during the period beginning on the first day of the first pay period which began on or after October 1, 1977, or the effective date of the alternative plan of the President of the United States, whichever is later, and ending on the effective date of this act, for services rendered during such period; and

(2) in accordance with the provisions of subchapter VIII of chapter 55 of title 5 of the United States Code (relating to settlement of accounts of deceased employees), for services rendered during the period beginning on the first pay period which began on or after October 1, 1977, or the effective date of the alternative plan of the President of the United States, whichever is later, and ending on the effective date of this act, by any such employee who dies during such period.

(b) For purposes of this section, service in the Armed Forces of the United States in the case of an individual relieved from training, and service in the Armed Forces of the United States or discharged from hospitalization following such training and service, shall include the period provided by law for the mandatory restoration of such individual to a position in or under the municipal government of the District of Columbia.

(c) For the purpose of determining the amount of insurance for which an individual is eligible under the provisions of chapter 87 of title 5 of the United States Code (relating to government employees’ group life insurance), all changes in rates of compensation of salary which result from the enactment of this act shall be held and considered to be effective as of the effective date of this act.”

Section 5 of said act provided:

“The process, authorized elsewhere in this act, whereby the salaries of the District of Columbia police and firefighters are adjusted in accordance with the rates of pay for federal General Schedule employees, shall be in effect only for the period commencing on October 1, 1977 and ending on September 30, 1978.”

CHAPTER 10.—POLICE AND FIREFIGHTER MEDICAL CARE RECOVERY.

Sec.

- 4-1001. Definitions.
- 4-1002. Right of District to recover.
- 4-1003. Enforcement of right.
- 4-1004. Lien held by District: Recovery under lien.
- 4-1005. Promulgation of regulations by Mayor.
- 4-1006. Compromise, release or waiver of claim.

Sec.

- 4-1007. Effect of chapter on other rights of policemen or firemen.
- 4-1008. Injuries or diseases incurred or contracted prior to enactment of chapter.
- 4-1009. Authorization of appropriations.

§ 4-1001. Definitions.

As used in this chapter, the term “Mayor” means the Mayor of the District of Columbia or his designated agent, and the term “person” means an individual, firm, partnership, joint stock company, corporation, association, incorporated society, statutory or common law trust, estate, executor, administrator, receiver, trustee, conservator, liquidator, committee, assignee, officer, employee, principal or agent. (Aug. 17, 1978, D.C. Law 2-100, § 2, 25 DCR 288.)

Legislative History of Law 2-100. Law 2-100 was introduced in Council and assigned Bill No. 2-98, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on May 2, 1978 and May 16, 1978, respectively. Signed by the Mayor on June 15, 1978, it was assigned Act No. 2-208 and transmitted to both Houses of Congress for its review.

Short title. The first section of the act of Aug. 17, 1978, D.C. Law 2-100, 25 DCR 288, provided: “That this act may be cited as the ‘District of Columbia Medical Care Recovery Act of 1978.’ ”

§ 4-1002. Right of District to recover.

Whenever the District of Columbia is authorized or required by law to (a) furnish or pay the expenses for hospital, medical, surgical, dental care and treatment (including prostheses and

medical appliances) or the funeral expenses of an officer or member of the Metropolitan Police Department or the Fire Department of the District of Columbia (hereinafter, "policeman or fireman"); or (b) extend leave of absence with pay to a policeman or fireman who is injured or suffers a disease under circumstances creating a tort liability upon a third person to pay damages therefor, whether or not received or contracted in the performance of duty, the District of Columbia shall have a right to recover from said third person the reasonable value of the care and treatment so furnished or to be furnished, or for which payment has been or will be made, and the amount of wages paid or to be paid during the leave of absence resulting therefrom, and shall as to such right, be subrogated to any right or claim which the injured or diseased policeman or fireman, his guardian, personal representative, estate, dependents, or survivors has or have against such third person to the extent of the reasonable value of the care and treatment so furnished or to be furnished, or for which payment has been or will be made, and the amount of wages based upon an authorized leave of absence paid or to be paid to such policeman or fireman. The Mayor may also require the injured or diseased policeman or fireman, his guardian, personal representative, estate, dependents, or survivors, as appropriate, to assign his claim or cause of action against the third person to the District of Columbia to the extent of the District's right or claim. (Aug. 17, 1978, D.C. Law 2-100, § 3, 25 DCR 288.)

Legislative History of Law 2-100. See note to § 4-1001.
Section referred to in section. 4-1006.

§ 4-1003. Enforcement of right.

To enforce such right, the District of Columbia may (a) intervene or join in any action or proceeding brought by the injured or diseased policeman or fireman, his guardian, personal representative, estate, dependents, or survivors, against the third person who is or may be liable in damages for the injury or disease; or (b) if such action or proceeding is not commenced within six (6) months after the first day in which care and treatment is furnished by the District of Columbia in connection with the injury or disease involved, institute and prosecute legal proceedings in a District of Columbia, state or federal court, either alone (in its name or in the name of the injured policeman or fireman, his guardian, personal representative, estate, dependents, or survivors) or in conjunction with the injured policeman or fireman, his guardian, personal representative, estate, dependents or survivors against the third person who is liable for the injury or disease. Any employee of the District of Columbia who is required to appear as a party or witness in the prosecution of said action or proceeding is, when directed to participate in the preparation for trial or the trial thereof and while so engaged, in an active duty status. (Aug. 17, 1978, D.C. Law 2-100, § 4, 25 DCR 288.)

Legislative History of Law 2-100. See note to § 4-1001.
Section referred to in section. 4-1006.

§ 4-1004. Lien held by District: Recovery under lien.

(a) The District of Columbia shall have a lien, to the amount of the reasonable value of the care and treatment, funeral expenses, and wage payments described in section 4-1002, upon any recovery of sum received or collected or to be collected by an injured or diseased policeman or fireman, his guardian, personal representative, estate, dependents, or survivors in a claim or action asserted or maintained by such policeman or fireman or his personal representative against a liable third person for damages.

(b) No such lien described above shall be effective, however, unless, prior to the payment of any moneys to such injured or diseased policeman or fireman, his attorney, or personal representative as compensation for such injury or disease, the District of Columbia shall have filed in the Office of the Recorder of Deeds of the District of Columbia, in a docket provided for such liens, a written notice containing the name and address of the injured or diseased policeman or fireman, the date and approximate place of the accident or incident giving rise thereto and the name of the person alleged to be liable to the policeman or fireman for the

injuries or disease received; or unless the District of Columbia shall also mail, postage prepaid, a copy of such notice with a statement of the date of filing thereof to the person alleged to be liable to the policeman or fireman for the injuries or disease received, prior to the payment of any moneys to such injured or diseased policeman or fireman, his attorney, or personal representative as compensation for such injury or disease. Where the name of an insurance carrier for the third party tort-feasor is ascertained, the District of Columbia shall also mail a copy of such notice to such insurance carrier. Notice of the filing of the lien shall also be given to the injured or diseased policeman or fireman, or to his attorney or personal representative.

(c) Any person, including an insurance carrier, who, after the mailing of such notice, shall make any payment to such policeman or fireman or to his attorney or personal representative as compensation for the injury sustained or disease contracted without paying to the District of Columbia the amount of its lien or so much thereof as can be satisfied out of the moneys due under any final judgment or compromise or settlement agreement after paying the amount of any prior liens, shall for a period of one (1) year from the date of payment to such policeman or fireman, his attorney, or personal representative, as aforesaid, be and remain liable to said District of Columbia for the amount which the District was entitled to receive under its lien, and the District of Columbia may, within such period, enforce its lien by an action against the person making any such payment.

(d) When a policeman or fireman or his attorney or personal representative receives, as a result of an action or proceeding brought by the policeman or fireman or on his behalf or a result of a settlement made by him or on his behalf, any moneys or other property in satisfaction of the liability of a third person for the injury sustained or disease contracted, such policeman or fireman or his attorney or personal representative, as the case may be, shall ascertain and pay to the District of Columbia the amount of its lien or so much thereof as can be realized out of any such recovery or settlement. Notwithstanding any other provision of law, whenever a policeman or fireman or his attorney or personal representative receives any payment as described in the preceding sentence and fails to pay to the District of Columbia the amount of its lien, the District of Columbia is authorized to take appropriate action to recover from such policeman or fireman or his attorney or personal representative the amount of its lien, including but not limited to the right to counterclaim, setoff, or attach moneys or other property otherwise due and payable from the District of Columbia to said policeman or fireman, his guardian, personal representative, estate, dependents or survivors. (Aug. 17, 1978, D.C. Law 2-100, § 5, 25 DCR 288.)

Legislative History of Law 2-100. See note to § 4-1001.
Section referred to in section. 4-1006.

§ 4-1005. Promulgation of regulations by Mayor.

The Mayor is authorized to promulgate rules and regulations to carry out the purposes of this chapter, including but not limited to regulations (a) with respect to the determination and establishment of the reasonable value of the hospital, medical, surgical, or dental care and treatment (including prostheses and medical appliances) furnished or to be furnished, or paid or to be paid; and (b) to provide procedures for distributing the proceeds from recoveries and settlements obtained by either the injured or diseased policeman or fireman or the District of Columbia: Provided, that in any event said policeman or fireman, or his guardian, personal representative, estate, dependents or survivors shall have the right to retain not less than one-fifth ($\frac{1}{5}$) of the net amount of any money or other property remaining after the expenses of a suit or settlement have been deducted; and in addition at the time of distribution, an amount equivalent to a reasonable attorney's fee proportionate to the lien of the District of Columbia. (Aug. 17, 1978, D.C. Law 2-100, § 6, 25 DCR 288.)

Legislative History of Law 2-100. See note to § 4-1001.
Section referred to in section. 4-1006.

§ 4-1006. Compromise, release or waiver of claim.

To the extent prescribed by regulations under section 4-1005, the Mayor may (a) compromise or settle and execute a release of any claim which the District of Columbia has by virtue of the rights established by sections 4-1002, 4-1003, or 4-1004; or (b) for the convenience of the District of Columbia, or if the Mayor determines that collection would result in undue hardship upon the policeman or fireman who suffered the injury or disease resulting in care and treatment described in section 4-1002, or upon his dependents or survivors, waive any such claim in whole or in part. (Aug. 17, 1978, D.C. Law 2-100, § 7, 25 DCR 288.)

Legislative History of Law 2-100. See note to § 4-1001.

§ 4-1007. Effect of chapter on other rights of policemen or firemen.

No action taken by the District of Columbia in connection with the rights afforded under this chapter shall operate to deny to the injured or diseased policeman or fireman recovery for any damages or portion thereof not covered by this chapter. (Aug. 17, 1978, D.C. Law 2-100, § 8, 25 DCR 288.)

Legislative History of Law 2-100. See note to § 4-1001.

§ 4-1008. Injuries or diseases incurred or contracted prior to enactment of chapter.

Nothing in this chapter shall be deemed to apply to any hospital, medical, surgical, or dental care or treatment or wage payments based upon an authorized leave of absence which a policeman or fireman is receiving or is entitled to receive from the District of Columbia for an injury received or disease contracted prior to enactment of this chapter. (Aug. 17, 1978, D.C. Law 2-100, § 9, 25 DCR 288.)

Legislative History of Law 2-100. See note to § 4-1001.

§ 4-1009. Authorization of appropriations.

Appropriations to carry out the purposes of this chapter, including funds for the advancement of costs and expenses for the enforcement of recoveries, are hereby authorized. (Aug. 17, 1978, D.C. Law 2-100, § 10, 25 DCR 288.)

Legislative History of Law 2-100. See note to § 4-1001.

CHAPTER 11.—REGISTRATION OF STATE OFFICIALS ENTERING DISTRICT.

Sec.

4-1101. Definitions.

4-1102. When required — Exceptions — Penalties —
Promulgation of regulations by Chief.

§ 4-1101. Definitions.

For purposes of this chapter:

(a) "State" means the several states of the United States, Puerto Rico, the Virgin Islands, American Samoa and Guam.

(b) "State official" means any agent, employee, or representative officially responsible for the administration and enforcement of laws of a state relating to alcoholic beverages, tobacco, and tobacco products.

(Sept. 9, 1978, D.C. Law 2-102, § 2, 25 DCR 303.)

Legislative History of Law 2-102. Law 2-102 was introduced in Council and assigned Bill No. 2-45, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on May 2, 1978 and May 16, 1978, respectively. There being no action by the

Mayor, it was assigned Act No. 2-212 and transmitted to both Houses of Congress for its review.

Short title. The first section of the act of Sept. 9, 1978, D.C. Law 2-102, 25 DCR 303, provided: "That this act may

be cited as the 'State Revenue Officers Registration Act of 1978.' "

§ 4-1102. When required — Exceptions — Penalties — Promulgation of regulations by Chief.

(a) Notwithstanding any other law or provision of law, including any executive agreements or understandings, any State official coming into the District of Columbia:

(1) to enforce that State's laws relating to alcoholic beverages, tobacco or tobacco products, including any law levying a tax on alcoholic beverages, tobacco or tobacco products; or

(2) to conduct an investigation or surveillance or cause to be surveilled activities done in the District of Columbia relating to a possible violation of the laws of that State shall first register with the Chief of the Metropolitan Police Department of the District of Columbia (hereinafter referred to as the "Chief"). Such State official shall first register in person or in writing with the Chief seventy-two (72) hours in advance of each such entry into the District of Columbia. Such State official shall, in addition, provide to the Chief a written statement setting forth the identity of such State official, the purpose of his intended entry into the District of Columbia, and the time and place(s) at which such State official will be present in the District of Columbia for such purpose. Any person who registers shall be issued a certificate of registration which must be retained in the possession of the person during all investigative or surveillance activities.

(b) This section shall not apply to any State law enforcement officer who enters the District of Columbia lawfully in hot pursuit of a person suspected of having committed a crime, or to any State law enforcement officer entering the District of Columbia solely for the purpose of conducting business with either the federal or the District of Columbia government.

(c) Any State official found to be in violation of this section shall be subject to a civil fine of up to three hundred dollars (\$300) for each violation.

(d) Pursuant to the District of Columbia Administrative Procedure Act (D.C. Code, sec. 1-1501 et seq.), the Chief shall promulgate such regulations as are necessary to carry out the provisions of this chapter. (Sept. 9, 1978, D.C. Law 2-102, § 3, 25 DCR 303.)

Legislative History of Law 2-102. See note to § 4-1101.

TITLE 5.—BUILDING RESTRICTIONS AND REGULATIONS

Chap.	Sec.
1. Alley Dwellings	5-101
3. Fire Escapes and Safety Provisions	5-301
4. Zoning and Height of Buildings	5-401
5. Unsafe Structures	5-501
6. Insanitary Buildings	6-601
7. Housing Redevelopment	5-701
12. Condominiums	5-1201

CHAPTER 1.—ALLEY DWELLINGS

§ 5-103a. National Capital Housing Authority — Functions and powers of President transferred to Mayor.

NOTES TO DECISIONS

Authority is not suable entity since this section does not explicitly or implicitly establish the Authority as sui juris, in contrast with the provision in § 5-703(b) giving the Redevelopment Land Agency the power to sue and be sued. *Braxton v. National Capital Hous. Auth.* (D.C. 1978, 396 A.2d 215).

CHAPTER 3.—FIRE ESCAPES AND SAFETY PROVISIONS

Sec.	Sec.
5-328. Smoke detectors — Definitions.	5-332. Same — Installation.
5-329. Same — General requirements.	5-333. Same — Maintenance.
5-330. Same — Locations.	5-334. Same — Permits.
5-331. Same — Equipment.	5-335. Same — Other applicable standards.

§ 5-328. Smoke detectors — Definitions.

As used in sections 5-328 to 5-335:

(a) The term “dwelling unit” means a structure, building, area, room, or combination of rooms occupied by persons for sleeping or living.

(b) The term “hospital” means a building or part thereof used for the medical, psychiatric, obstetrical or surgical care, on a twenty-four (24) hour basis, of inpatients.

The term “hospital” includes general hospitals, mental hospitals, tuberculosis hospitals, children’s hospitals, and any such facilities providing inpatient care.

(c) The term “nursing home” means a building or part thereof used for the lodging, boarding and nursing care, on a twenty-four (24) hour basis, of persons who, because of mental or physical incapacity, may be unable to provide for their own needs and safety without the assistance of another person.

The term “nursing home” includes nursing and convalescent homes, skilled nursing facilities, intermediate care facilities, and infirmaries of homes for the aged.

(d) The term “owner” means any person who, alone, or jointly or severally with other persons, has legal title to any premises.

(1) The term “owner” includes any person who has charge, care or control over any premises as (A) an agent, officer, fiduciary, or employee of the owner; (B) the committee, conservator, or legal guardian of an owner who is non compos mentis, a minor, or otherwise under a disability; (C) a trustee, elected or appointed, or a person required by law to execute a trust, other than a trustee under a deed of trust to secure the payment of money; or (D) an executor, administrator, receiver, fiduciary, officer appointed by any court, or other similar representative of the owner or his estate.

(2) The term “owner” does not include a lessee, sublessee or other person who merely has the right to occupy or possess a premises.

(e) The term “residential-custodial care facility” means a building, or part thereof, used for the lodging or boarding of persons who are incapable of self-preservation because of age or physical or mental limitation, or who are detained for correctional purposes.

(1) The term “residential-custodial care facility” includes homes for the aged, nurseries (custodial care for children under six (6) years of age), institutions for the mentally retarded (care institutions) and halfway houses, as well as sheltered living facilities and halfway houses operated by the District of Columbia Department of Corrections and District of Columbia Department of Human Resources.

(2) The term “residential-custodial care facility” does not include day care facilities that do not provide lodging or boarding for institutional occupants.

(f) The term “sleeping area” means a bedroom or room intended for sleeping, or a combination of bedrooms or rooms intended for sleeping within a dwelling unit, which are located on the same floor and are not separated by another habitable room, such as a living room, dining room or kitchen but not a bathroom, hallway or closet. A dwelling unit may have more than one sleeping area.

The term “sleeping area” does not include common usage areas in structures with more than one dwelling unit, such as corridors, lobbies and basements.

(g) The term “smoke detector” means a device which detects visible or invisible particles of combustion.

(h) The term “substantially rehabilitated” means any improvement to a structure which is valued greater than one-half ($\frac{1}{2}$) of the assessed valuation of the property including the land. (June 20, 1978, D.C. Law 2-81, § 2, 24 DCR 9050.)

Legislative History of Law 2-81. Law 2-81 was introduced in Council and assigned Bill No. 2-157, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on February 21, 1978 and March 7, 1978, respectively. Signed by the Mayor on April 17, 1978, it was assigned Act No. 2-178 and transmitted to both Houses of Congress for its review.

Short title. The first section of the act of June 20, 1978, D.C. Law 2-81, 24 DCR 9050, provided: “That this act may be cited as the ‘Smoke Detector Act of 1978.’ ”

Section referred to in section. 5-330.

§ 5-329. Same — General requirements.

The owner of each new or existing dwelling unit, hotel, motel, hospital, nursing home and residential-custodial care facility shall install smoke detectors as required by sections 5-328 to 5-335. The Mayor shall install smoke detectors in each dwelling unit, hospital, nursing home, jail, prison and residential-custodial care facility owned by the District of Columbia.

(a) The owner of each dwelling unit, hotel, motel, hospital, nursing home, jail, prison and residential-custodial care facility which is constructed or substantially rehabilitated under a building permit issued after September 30, 1978, shall install smoke detectors as required by sections 5-328 to 5-335.

(b) The owner of each dwelling unit, hotel, motel, hospital, nursing home and residential-custodial care facility, except as provided in subsections (a) and (c) of this section, shall install smoke detectors as required by sections 5-328 to 5-335 within three (3) years of the effective date of sections 5-328 to 5-335.

(c) The Mayor shall install smoke detectors as required by sections 5-328 to 5-335 in each dwelling unit, hospital, nursing home, jail, prison, and residential-custodial care facility owned by the District of Columbia, except as provided in subsection (a) of this section, within two (2) years of the effective date of sections 5-328 to 5-335. (June 20, 1978, D.C. Law 2-81, § 3, 24 DCR 9050.)

Legislative History of Law 2-81. See note to § 5-328.

§ 5-330. Same — Locations.

(a) The owner of each dwelling unit shall install at least one (1) smoke detector to protect each sleeping area. In an efficiency, the owner shall install the smoke detector in the room used for sleeping. In all other dwelling units, the owner shall install the smoke detector outside the bedrooms but in the immediate vicinity of the sleeping area.

(b) The owner of each hotel and motel shall install at least one (1) smoke detector to protect each guest room or guest suite. For the purpose of this paragraph, “guest suite” means a combination of rooms that are always occupied as a single unit. The owner of the hotel or motel shall install the smoke detectors as directed by the Fire Chief of the District of Columbia.

(c) The owner of each hospital, nursing home, jail, prison and residential-custodial care facility shall install smoke detectors as directed by the Fire Chief of the District of Columbia and as follows:

(1) in each corridor that is adjacent to a room used for sleeping but in no case may the smoke detectors be spaced further apart than thirty (30) feet or more than fifteen (15) feet from any wall; or

(2) in each room used for sleeping.

(d) An owner subject to sections 5-328 to 5-335 shall install each smoke detector on the ceiling at a minimum of six (6) inches from the wall, or on a wall at a minimum of six (6) inches from the ceiling.

(e) An owner subject to sections 5-328 to 5-335 may not install a smoke detector in a dead air space, such as where the ceiling meets the wall. (June 20, 1978, D.C. Law 2-81, § 4, 24 DCR 9050.)

Legislative History of Law 2-81. See note to § 5-328.

§ 5-331. Same — Equipment.

(a) An owner subject to sections 5-328 to 5-335 shall install a smoke detector which is capable of sensing visible or invisible particles of combustion and emitting an audible signal. The owner shall install a smoke detector which is of a type approved by the Fire Chief of the District of Columbia consistent with any appropriate federal regulations. The owner shall install a smoke detector in accordance with specifications of the manufacturer or in compliance with the National Fire Protection Association Standards 72-E and 74 (1974 Edition).

(b) Within forty (40) days after the effective date of sections 5-328 to 5-335 and before approving any type of smoke detector pursuant to this section, the Fire Chief of the District of Columbia or his designated agent shall hold a public hearing at which he shall consider, in addition to any other matter he considers relevant, any potential radiological danger presented by any of the types of smoke detectors under consideration. (June 20, 1978, D.C. Law 2-81, § 5, 24 DCR 9050.)

Legislative History of Law 2-81. See note to § 5-328.

§ 5-332. Same — Installation.

(a) Except as provided in subsections (b) and (c) of this section, the owner of each dwelling unit, hotel, motel, hospital, nursing home, jail, prison and residential-custodial care facility shall directly wire the smoke detector to the power supply of the building.

(b) In each dwelling unit, hotel, motel, hospital, nursing home, jail, prison and residential-custodial care facility which is in existence on September 30, 1978, or which is constructed under a building permit issued before October 1, 1978, or which is substantially rehabilitated, the owner may install a smoke detector which operates from a plug-in outlet fitted with a plug restrainer device if the outlet is not controlled by an on-off switch and if the cord connecting the smoke detector with the outlet is not controlled by an on-off switch.

(c) In each dwelling unit in a structure with only one (1) dwelling unit which is in existence on September 30, 1978, or which is constructed under a building permit issued before October

1, 1978, or which is substantially rehabilitated, the owner may install a monitored battery powered smoke detector. (June 20, 1978, D.C. Law 2-81, § 6, 24 DCR 9050.)

Legislative History of Law 2-81. See note to § 5-328.

§ 5-333. Same — Maintenance.

An owner subject to sections 5-328 to 5-335 shall maintain each smoke detector in a reliable operating condition and shall make periodic inspections and tests to insure that each smoke detector is in proper working condition. (June 20, 1978, D.C. Law 2-81, § 7, 24 DCR 9050.)

Legislative History of Law 2-81. See note to § 5-328.

§ 5-334. Same — Permits.

No owner may permanently wire a smoke detector to the electrical system of a structure without first obtaining an electrical permit from the Permit Division of the Department of Economic Development. (June 20, 1978, D.C. Law 2-81, § 8, 24 DCR 9050.)

Legislative History of Law 2-81. See note to § 5-328.

§ 5-335. Same — Other applicable standards.

Any person who installs a smoke detector shall comply with the requirements of sections 5-328 to 5-335 and the National Fire Protection Association Standards 72-E and 74 (1974 Edition). In the event of a conflict between sections 5-328 to 5-335 and the National Fire Protection Association Standards 72-E and 74 (1974 Edition), sections 5-328 to 5-335 take precedence. (June 20, 1978, D.C. Law 2-81, § 9, 24 DCR 9050.)

Legislative History of Law 2-81. See note to § 5-328.

CHAPTER 4.—ZONING AND HEIGHT OF BUILDINGS

§ 5-414. Purposes of zoning regulations.

NOTES TO DECISIONS

Meaning of comprehensive plan referred to in section. — Under this section, the only comprehensive plan with which zoning must be consistent is the plan to be adopted pursuant to § 1-1002 (a), relating to the National Capital Planning Commission. *Citizens Ass'n v. Zoning Comm'n* (D.C. 1978, 392 A.2d 1027).

Although the comprehensive plan for the National Capital has not yet been published, Congress did not intend that until publication a plan prepared by the National Capital Planning Commission in 1968 (when it still retained total authority for land use planning in the District) should control. *Citizens Ass'n v. Zoning Comm'n* (D.C. 1978, 392 A.2d 1027).

National Capital plan not prerequisite for zoning activities. — No time limit is set for preparation of the comprehensive plan for the National Capital under § 1-1002, nor is there a moratorium upon zoning activities until the plan is in effect. *Citizens Ass'n v. Zoning Comm'n* (D.C. 1978, 392 A.2d 1027).

Proper standard for zoning until plan adopted. — Since the plan for the National Capital to be adopted pursuant to § 1-1002 (a) had not yet been published, compliance with the comprehensive plan provision of this section required solely that the Commission zone on a uniform and comprehensive basis. *Citizens Ass'n v. Zoning Comm'n* (D.C. 1978, 392 A.2d 1027).

Requirements for reclassification of particular parcels. — This section does not require the Commission to find evidence that the character of a zoning district has substantially changed since promulgation of the zoning map in order to reclassify a particular parcel within the district. *Rock Creek E. Neighborhood League, Inc. v. District of Columbia Zoning Comm'n* (D.C. 1978, 388 A.2d 450).

Cited in *Schneider v. District of Columbia Zoning Comm'n* (D.C. 1978, 383 A.2d 324).

§ 5-415. Existing zoning regulations continued until amended — Public hearing on amendments — Notice — Contents.

NOTES TO DECISIONS

Right to hearing does not confer contested case status. — The statutory right to a hearing afforded by this section does not in and of itself confer “contested case” status on hearings conducted by the Zoning Commission. *Schneider v. District of Columbia Zoning Comm’n* (D.C. 1978, 383 A.2d 324).

Ex parte communications proper. — Ex parte communications between the Zoning Commission staff and

developers which occurred between the closing of the record and issuance of the Commission’s final orders did not violate due process or the requirements of the Administrative Procedure Act (§ 1-1501 et seq.). *Citizens Ass’n v. Zoning Comm’n* (D.C. 1978, 392 A.2d 1027).

§ 5-417. Public hearings on proposed zoning regulations, maps, and amendments — Notice — Submission to National Capital Planning Commission.

NOTES TO DECISIONS

Public input requirements met. — The requirements under this section and § 1-1505 that interested members of the public have a reasonable opportunity to comment and submit data in support of or in opposition to proposed regulations was met by holding four days of hearings and permitting a substantial period for submission of written comments. *Citizens Ass’n v. Zoning Comm’n* (D.C. 1978, 392 A.2d 1027).

Ex parte communications proper. — Ex parte communications between the Zoning Commission staff and developers which occurred between the closing of the record and issuance of the Commission’s final orders did not violate due process or the requirements of the Administrative Procedure Act (§ 1-1501 et seq.). *Citizens Ass’n v. Zoning Comm’n* (D.C. 1978, 392 A.2d 1027).

§ 5-420. Board of Zoning Adjustment — Creation, membership — Tenure — Regulations to govern organization and procedure — Appeal — Procedure, powers — Majority vote necessary.

NOTES TO DECISIONS

Subsequent conditions may justify variance. — The phrase in subdivision (3) “or other extraordinary or exceptional situation or condition of a specific property” empowers the Board to provide variance relief from extraordinary or exceptional conditions brought about after the original adoption of a zoning regulation or inhering in the land itself at that time. *De Azcarate v. District of Columbia Bd. of Zoning Adjustment* (D.C. 1978, 388 A.2d 1233).

The extraordinary or exceptional condition which is the basis for a use variance need not be inherent in the land but can be caused by subsequent events extraneous to the land itself, although a subsequent event will not invariably support the grant of a variance, particularly if an affirmative act of the applicant is the direct and sole cause of the hardship complained of. *De Azcarate v. District of Columbia Bd. of Zoning Adjustment* (D.C. 1978, 388 A.2d 1233).

Variance properly granted. — Where owners acted in good faith reliance on the implicit findings of zoning office personnel that their irregular lot conformed to lot width

requirements though in fact the lot was not in conformance, the Board properly granted a variance since the lot was unusable for any other purpose, the variance would not substantially harm the public and the hardship to the owners was not the result of any affirmative act on their part. *De Azcarate v. District of Columbia Bd. of Zoning Adjustment* (D.C. 1978, 388 A.2d 1233).

Self-created hardship is not considered in an application for an area variance, as that factor only militates against a use variance. *Association For Preservation of 1700 Block of N St., N.W., & Vicinity v. District of Columbia Bd. of Zoning Adjustment* (D.C. 1978, 384 A.2d 674).

Area variance proper. — Where the evidence showed that due to the irregular shape of a lot the cost to provide required off-street parking would be extraordinary, the owner had satisfied its burden of showing a practical difficulty sufficient to support the grant of an area variance. *Association For Preservation of 1700 Block of N St., N.W., & Vicinity v. District of Columbia Bd. of Zoning Adjustment* (D.C. 1978, 384 A.2d 674).

§ 5-422. Building permits — Construction without obtaining — Certificates of occupancy — Use without obtaining — Construction in violation of regulations — Enforcement — Actions, parties — Penalty.

Section referred to in section. 47-3301.

NOTES TO DECISIONS

Cited in *Hsu v. Thomas* (D.C. 1978, 387 A.2d 588).

CHAPTER 5.—UNSAFE STRUCTURES

§ 5-504. Nuisances to be abated — Notice given — Cost a lien on property — Penalty — Prosecution.

NOTES TO DECISIONS

Safety obligations of District regarding particular tree. — The obligation of the District of Columbia to assure a reasonable degree of safety on its streets required that it be alert to the presence of and carefully observe at periodic intervals an enormous, multi-trunked tree that was unusually susceptible to weakening and had a 90-foot overhanging stem weighing ten tons, and the District had to be prepared to abate such hazards as its inspections revealed. *Husovsky v. United States* (1978, 590 F.2d 944).

CHAPTER 6.—INSANITARY BUILDINGS

§ 5-622. Owner's failure to comply with order — Repair or demolition by Board for the Condemnation of Insanitary Buildings — Payments of costs — Effect of appeal.

NOTES TO DECISIONS

Cited in *District of Columbia Redevelopment Land Agency v. Eleven Parcels of Land in Squares* (1978, 589 F.2d 628).

CHAPTER 7.—HOUSING REDEVELOPMENT

Sec.
5-732b. Advisory relocation services for persons displaced by condominium conversions; rehabilitation, demolition or discontinuance.

§ 5-703. Establishment and powers of the Agency.

NOTES TO DECISIONS

Cited in *Braxton v. National Capital Hous. Auth.* (D.C. 1978, 396 A.2d 215).

§ 5-704. Power to acquire and assemble real property — Public utility relocation expenses.

Transfer of U.S. property. Act Sept. 26, 1978, Pub. L. 95-385, 92 Stat. 749, provides for the transfer of certain U.S. property to the District of Columbia Redevelopment Land Agency.

NOTES TO DECISIONS

Government priority over proceeds of condemnation. — Where private and public claims compete for the proceeds from a condemnation or tax sale, payment to the government takes priority over satisfaction of private interests. *District of Columbia Redevelopment Land Agency v. Eleven Parcels of Land in Squares* (1978, 589 F.2d 628).

§ 5-705. General and project area redevelopment plans — Shaw Junior High School.

NOTES TO DECISIONS

Use of plan by HUD. — Review of and partial reliance on Redevelopment Land Agency’s urban renewal plan by the federal Department of Housing and Urban

Development was not an abdication by HUD of its decision-making duty. *Stanback v. Harris* (1978, 444 F. Supp. 1143).

§ 5-732. Council authorized to make regulations.

New implementing regulations. Pursuant to this section the “Relocation Regulation Payment Increase

Amendment Act of 1978” (D.C. Law 2-122, Oct. 13, 1978, 25 DCR 1547) was enacted.

§ 5-732a. Relocation payments and assistance — Persons displaced by public works programs and projects of District Goverment and of Washington Metropolitan Area Transit Authority.

Emergency Act Amendments.
1978 — For temporary amendment of section, see sec. 10 of the Second Emergency Cooperative Regulation Act of 1978 (D.C. Act 2-171, Apr. 3, 1978, 24 DCR 9265); sec.

10 of the Third Emergency Cooperative Regulation Act of 1978 (D.C. Act 2-239, July 17, 1978, 25 DCR 1480); and sec. 10 of the Fourth Emergency Cooperative Regulation Act of 1978 (D.C. Act 2-290, Oct. 25, 1978, 25 DCR 4332).

§ 5-732b. Advisory relocation services for persons displaced by condominium conversions, rehabilitation, demolition or discontinuance.

Whenever a building in the District of Columbia is converted from rental to condominium units, or is substantially rehabilitated or demolished, or is discontinued from housing use, the Relocation Assistance Office shall provide relocation advisory services for tenants who move from the converted, substantially rehabilitated, demolished, or discontinued building. This includes: Ascertaining the relocation needs for each household; providing current information on the availability of equivalent substitute housing; supplying information concerning Federal and District housing programs; and providing other advisory services to displaced persons in order to minimize hardships in adjusting to relocation. (Mar. 29, 1977, D.C. Law 1-89, title V, § 516, 23 DCR 9532b; Mar. 16, 1978, D.C. Law 2-54, § 804, 24 DCR 5334; Oct. 13, 1978, D.C. Law 2-121, § 2, 25 DCR 1542.)

Effect of Amendments.
1978 — Act March 16, 1978, D.C. Law 2-54, amended section by adding the words “or is substantially rehabilitated or demolished,” immediately after the phrase “converted from rental to condominium units,” in the first sentence and by inserting the phrase, “substantially rehabilitated or demolished” between the words “converted” and “building” at the end of such sentence. Act Oct. 13, 1978, D.C. Law 2-121, amended section by adding “or is discontinued from housing use,” in the first sentence and by deleting “or demolished,” and inserting “, demolished or discontinued,” in the first sentence.

Emergency Act Amendments.
1978 — For temporary repeal of section, see sec. 10 of the Second Emergency Cooperative Regulation Act of 1978 (D.C. Act 2-171, Apr. 3, 1978, 24 DCR 9265); sec. 10 of the Third Emergency Cooperative Regulation Act of 1978 (D.C. Act 2-239, July 17, 1978, 25 DCR 1480); and sec. 10 of the Fourth Emergency Cooperative Regulation Act of 1978 (D.C. Act 2-290, Oct. 25, 1978, 25 DCR 4332).
Legislative History of Law 2-54. See note to § 45-1681.
Legislative History of Law 2-121. See note to § 45-1699.6.

CHAPTER 12.—CONDOMINIUMS

Subchapter I. — General Provisions

Sec.

5-1202. Definitions.

Subchapter V.—Condominium
Conversion—Housing Assistance

Part A.—Condominium Conversion

5-1281. Limitations on condominium conversions.

*Subchapter I.—General Provisions***§ 5-1201. Applicability.**

Section referred to in section. 45-1698.

§ 5-1202. Definitions.

For the purposes of this chapter:

* * * * *

(v) “Offer” shall mean any inducement, solicitation, or attempt to encourage any person or persons to acquire any legal or equitable interest in a condominium unit, other than as security for a debt; provided, however, that “offer” shall not mean any advertisement of a condominium not located in the District of Columbia in a newspaper or other periodical of general circulation, or in any public broadcast medium.

* * * * *

(As amended Sept. 22, 1978, D.C. Law 2-110, § 2, 25 DCR 1461.)

Effect of Amendment.

1978 — Act Sept. 22, 1978, D.C. Law 2-110, amended section by striking out “if such advertisement states that it does not constitute an offer of sale and that an offer may be made only in compliance with the condominium act of the state or territory in which the condominium is located” in subsection (v).

was referred to the Committee on Housing and Urban Development. The Bill was adopted on first and second readings on June 13, 1978 and June 27, 1978, respectively. Signed by the Mayor on July 17, 1978, it was assigned Act No. 2-231 and transmitted to both Houses of Congress for its review.

Legislative History of Law 2-110. Law 2-110 was introduced in Council and assigned Bill No. 2-200, which

*Subchapter V.—Condominium
Conversion—Housing Assistance*

PART A.—CONDOMINIUM CONVERSION**§ 5-1281. Limitations on condominium conversions.**

* * * * *

(b) (1) A housing accommodation or rental unit in the District of Columbia may be converted into a condominium —

* * * * *

(B) except as provided in paragraph (2), if that housing accommodation is not a high rent housing accommodation or if that rental unit is located in a housing accommodation which is not a high rent housing accommodation, at any time after March 29, 1977, at which the most recently computed vacancy rate (computed according to the procedure set forth upon the enactment of the Condominium Act of 1976, D.C. Law 1-89, by the Council July 20, 1976 effective at the end of the thirty day period, provided for Congressional review of acts of the Council under section 1-147(c)) higher than 3 percent.

For the purposes of this subchapter, the term “high rent housing accommodation” includes any housing accommodation in the District of Columbia for which the total monthly rent exceeds an amount computed for such housing accommodation as follows:

(i) multiply the number of rental units in the following categories by the corresponding rent: (I) \$228.50 for one (1) bedroom rental units; (II) \$287 for two (2) bedroom rental units; (III) \$403 for three (3) or more bedroom rental units; (IV) \$174 for efficiency rental units; and

* * * * *

(As amended Mar. 16, 1978, D.C. Law 2-54, § 605, 24 DCR 5334.)

Effect of Amendment.
1978 — Act March 16, 1978, D.C. Law 2-54, amended section by changing the amounts in item (i) of subsection (b) (1) from \$212.50 to \$228.50, \$267 to \$287, \$375 to \$403 and \$162.50 to \$174.

Emergency Act Amendments.
1978 — For temporary amendment of subsection (b), see sec. 3 of the Condominium Conversion Emergency Act

of 1978 (D.C. Act 2-159, Mar. 10, 1978, 24 DCR 8077); sec. 3 of the Second Condominium Conversion Emergency Act of 1978 (D.C. Act 2-204, June 9, 1978, 25 DCR 1273); sec. 3 of the Third Condominium Conversion Emergency Act of 1978 (D.C. Act 2-272, Aug. 21, 1978, 25 DCR 2542); and sec. 3 of the Fourth Condominium Conversion Emergency Act of 1978 (D.C. Act 2-309, Nov. 30, 1978, 25 DCR 5536).

Legislative History of Law 2-54. See note to § 45-1681.

§ 5-1296. Definitions.

Section referred to in sections. 45-1698, 45-1699.22.

TITLE 6.—HEALTH AND SAFETY

Chap.	Sec.
5. Garbage	6-501
5A. Hazardous Waste Management	6-521
12. Office of Civil Defense	6-1201
18. Firearms Control	6-1801
20. Youth Services	6-2001
22. Human Rights	6-2201
23. Energy Resources Shortages	6-2301

CHAPTER 5.—GARBAGE

Sec.
6-502. Mayor may contract for collection and disposal of garbage and refuse.

§ 6-502. Mayor may contract for collection and disposal of garbage and refuse.

The Mayor is authorized to enter into contracts for the collection and disposal of garbage, waste, refuse, ashes, sewage, and sludge for periods not exceeding twenty (20) years, subject to such criteria as the Council may by act establish and to annual appropriations by Congress: Provided, that any such contract which is for a period of more than five (5) years shall not be valid unless, with respect to that particular contract, the Council by a two-thirds (²/₃) vote of its members present and voting has first authorized such an extended contract. (May 18, 1910, 36 Stat. 389, ch. 248; Mar. 3, 1915, 38 Stat. 904, ch. 80; Apr. 6, 1978, D.C. Law 2-69, § 4, 24 DCR 6800.)

Effect of Amendment.
1978 — Act April 6, 1978, D.C. Law 2-69, amended section generally.
Legislative History of Law 2-69. Law 2-69 was introduced in Council and assigned Bill No. 2-99, which was referred to the Committee on Transportation and Environmental Affairs. The Bill was adopted on first,

amended first, second amended first and final readings on July 26, 1977, September 13, 1977, October 11, 1977 and October 25, 1977, respectively. Signed by the Mayor on January 27, 1978, it was assigned Act No. 2-135 and transmitted to both Houses of Congress for its review.
Compiler's changes. The word "two-third" has been changed to "two-thirds" at the end of the proviso.

CHAPTER 5A.—HAZARDOUS WASTE MANAGEMENT

Sec.	Sec.
6-521. Purposes and findings.	6-527. Inspections; right of entry.
6-522. Definitions.	6-528. Appeal procedures.
6-523. Permits.	6-529. Suspension and revocation of a permit.
6-524. Hazardous waste management plan.	6-530. Injunction.
6-525. Rulemaking.	6-531. Penalties.
6-526. Variance.	6-532. Severability.

§ 6-521. Purposes and findings.

- (a) The purposes of this chapter are:
- (1) to insure safe and effective hazardous waste management; and
 - (2) to establish a program of regulation over the storage, transportation, treatment, and disposal of hazardous wastes in the District of Columbia.
- (b) The Council of the District of Columbia finds that:
- (1) increasing production and consumption rates, continuing technological development, and energy requirements have led to the generation of greater quantities of hazardous waste;
 - (2) the problems of disposing of hazardous waste are increasing as a result of air and water pollution controls and a shortage of available landfill sites;

(3) while it is technologically and financially feasible for hazardous waste generators to dispose of their wastes in a manner which has a less adverse impact on the environment than current practices, such knowledge is not being utilized to the extent possible;

(4) even though the District of Columbia is not heavily industrialized, there is a significant daily hazardous waste disposal problem; and

(5) the public health and safety, and the environment, are threatened where hazardous wastes are not managed in an environmentally sound manner.

(Mar. 23, 1978, D.C. Law 2-64, § 2, 24 DCR 6289.)

Legislative History of Law 2-64. Law 2-64 was introduced in Council and assigned Bill No. 2-163, which was referred to the Committee on Transportation and Environmental Affairs. The Bill was adopted on first and second readings on November 22, 1977 and December 6, 1977, respectively. Signed by the Mayor on January 20,

1978, it was assigned Act No. 2-133 and transmitted to both Houses of Congress for its review.

Short title. The first section of the act of Mar. 23, 1978, D.C. Law 2-64, provided "That this act may be cited as the 'District of Columbia Hazardous Waste Management Act of 1977.' "

§ 6-522. Definitions.

For purposes of this chapter:

(a) The term "disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any hazardous waste into or on any land or water so that such hazardous waste or any constituent thereof may enter the environment, be emitted into the air, or discharged into any waters, including ground waters.

(b) The term "hazardous waste" means any waste or combination of wastes of a solid, liquid, contained gaseous, or semi-solid form which because of its quantity, concentration, or physical, chemical, or infectious characteristics, as established by the Mayor, may (1) cause, or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness; or (2) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed. Such wastes include, but are not limited to, those which are toxic, carcinogenic, flammable, irritants, strong sensitizers, or which generate pressure through decomposition, heat or other means, as well as containers and receptacles previously used in the transportation, storage, use or application of the substances described as a hazardous waste.

(c) The term "generation" means the act or process of producing hazardous waste.

(d) The term "Mayor" means the Mayor of the District of Columbia or his or her designated agent.

(e) The term "person" means any individual, partnership, corporation (including a government corporation), trust, association, firm, joint stock company, organization, commission, the District or federal government, or other entity.

(f) The term "storage" means containment in such a manner as not to constitute disposal.

(g) The term "transport" means the movement from the point of generation to any intermediate site, and finally to the point of ultimate storage or disposal.

(h) The term "treatment" means any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of a hazardous waste so as to neutralize or as to render it nonhazardous, safer for transport, amenable for recovery or storage, or reduced in volume.

(i) The term "treatment facility" means a location for treatment, including an incinerator or a facility where generation has occurred.

(Mar. 23, 1978, D.C. Law 2-64, § 3, 24 DCR 6289.)

Legislative History of Law 2-64. See note to § 6-521.

§ 6-523. Permits.

(a) One year after the effective date of this chapter, it will be unlawful to construct, substantially alter, or operate any hazardous waste treatment or disposal facility or site, or to

store, transport, treat, or dispose of any hazardous waste without first obtaining a permit from the Mayor for such facility, site, or activity.

(b) The Mayor is authorized to issue, vary or modify the terms of any permit, or to suspend, revoke, or deny a permit to achieve the purposes of this chapter, except that the Mayor may not issue a permit for a period exceeding one (1) year. The Mayor may establish the appropriate permit fee to cover the costs associated with its issuance. (Mar. 23, 1978, D.C. Law 2-64, § 4, 24 DCR 6289.)

Legislative History of Law 2-64. See note to § 6-521.
Section referred to in section. 6-529.

§ 6-524. Hazardous waste management plan.

Within six (6) months of the effective date of this chapter, the Mayor shall publish in the District of Columbia Register a hazardous waste management plan for the District of Columbia, which shall include, as a minimum:

- (a) a description of the criteria for determining what constitutes a hazardous waste;
 - (b) identification of the types and quantities of hazardous wastes generated in the District of Columbia, of hazardous wastes which may be amenable for recycling or reuse, of current hazardous waste management practices, of proper procedures for the handling, storage and transportation of hazardous wastes and of the best methods and facilities or sites (including possible extrajurisdictional sites) for the storage, treatment or disposal of hazardous wastes; and
 - (c) a comparison of the alternatives, costs and benefits of public and private transportation, storage, treatment, and disposal of hazardous wastes.
- (Mar. 23, 1978, D.C. Law 2-64, § 5, 24 DCR 6289.)

Legislative History of Law 2-64. See note to § 6-521.
Section referred to in section. 6-525.

§ 6-525. Rulemaking.

(a) Within three (3) months after publication of the plan required in section 6-524, the Mayor shall adopt, in accordance with the District of Columbia Administrative Procedure Act (D.C. Code, sec. 1-1505), and may thereafter revise as appropriate, rules and regulations necessary to carry out the purposes and provisions of this chapter, including, but not limited to:

(1) rules and regulations regarding the following aspects of proper hazardous waste management:

- (A) criteria for determining what constitutes a hazardous waste;
- (B) storage, treatment, and disposal of hazardous wastes;
- (C) transportation, containerization, and labeling of hazardous wastes (consistent with those issued by the United States Department of Transportation);
- (D) on-site handling, including the separation and combination of hazardous wastes;
- (E) operation and maintenance of hazardous waste treatment or disposal facilities or sites;
- (F) certification of supervisory personnel at hazardous waste treatment or disposal facilities or sites; and
- (G) procedures and requirements for the use of a manifest or form which identifies the quantity, composition, origin, routing, and destination of hazardous waste during its transportation from the point of generation to the point of disposal, treatment, or storage.

(b) At the time of publication of the proposed rules and regulations referred to in this section, a copy of the same shall be provided to the Council of the District of Columbia. (Mar. 23, 1978, D.C. Law 2-64, § 6, 24 DCR 6289.)

Legislative History of Law 2-64. See note to § 6-521.

§ 6-526. Variance.

The Mayor may grant a variance not to exceed one hundred and eighty (180) days upon a showing that compliance with the requirements of this chapter or the rules and regulations promulgated pursuant thereto would result in an unreasonable financial hardship, and that the public health and welfare would not be endangered. (Mar. 23, 1978, D.C. Law 2-64, § 7, 24 DCR 6289.)

Legislative History of Law 2-64. See note to § 6-521.

§ 6-527. Inspections; right of entry.

(a) For the purpose of enforcing this chapter or any rule or regulation promulgated pursuant to this chapter, the Mayor may at any reasonable time, within reasonable limits, and in a reasonable manner, upon presenting appropriate credentials to the owner, operator or agent in charge:

(1) enter without delay any place where hazardous wastes are generated, stored, treated, or disposed;

(2) inspect and obtain samples of any waste, or substance used in the treatment of waste;

(3) inspect and copy any records, reports, information, or test results relating to the purposes of this chapter. Each such inspection shall be commenced and completed with reasonable promptness.

(b) If the officer or employee obtains any samples prior to leaving the premises, he or she shall give to the owner, operator, or agent in charge, a receipt describing the sample obtained, and if requested, a portion of each such sample equal in volume or weight to the portion retained. If any analysis is made of such samples, a copy of the results of such analysis shall be furnished promptly to the owner, operator, or agent in charge. (Mar. 23, 1978, D.C. Law 2-64, § 8, 24 DCR 6289.)

Legislative History of Law 2-64. See note to § 6-521.

§ 6-528. Appeal procedures.

Any person adversely affected by an action taken pursuant to the provisions of this chapter or the rules and regulations promulgated thereto is entitled to a hearing before the Mayor upon filing with the Mayor, within fifteen (15) days of the date of such action, a written request for a hearing. Such hearing shall be held in accordance with other contested case procedures under the provisions of the District of Columbia Administrative Procedure Act (D.C. Code, sec. 1-1509). The decision on the appeal shall be final. (Mar. 23, 1978, D.C. Law 2-64, § 9, 24 DCR 6289.)

Legislative History of Law 2-64. See note to § 6-521.

§ 6-529. Suspension and revocation of a permit.

(a) The Mayor may suspend a permit issued in accordance with section 6-523 for a period not to exceed three (3) months if the holder of the permit is in violation of this chapter or the rules and regulations promulgated pursuant thereto. Written notice of the suspension shall be served upon the affected party or his or her designated agent. If no appeal is filed within ten (10) days of receipt of this notice, the suspension shall become final.

(b) Where there is a history of repeated violations and/or a permit has been previously suspended, the Mayor may revoke a permit, upon a showing of subsequent violation, and upon providing the affected party, or his or her designated agent, with written notice of the intent to revoke the permit, with an opportunity for a hearing prior to revocation. The revocation shall take effect fifteen (15) days after the notice has been given, unless a written request for a hearing is received by the Mayor within that period.

(c) Where a permit has been revoked, the person affected has the right to reapply for a permit. If this person is able to demonstrate an ability and willingness to comply with the permit and with the provisions of this chapter, and the rules and regulations promulgated pursuant thereto, the Mayor may consider granting this new permit. (Mar. 23, 1978, D.C. Law 2-64, § 10, 24 DCR 6289.)

Legislative History of Law 2-64. See note to § 6-521.

§ 6-530. Injunction.

Notwithstanding any other provision of this chapter, if the Mayor finds that any person is operating a storage, treatment, or disposal facility or site, or is transporting hazardous wastes in an illegal, unsafe, or otherwise improper manner as to endanger the public health or welfare, the Mayor may order such person to immediately discontinue the act. Upon failure to comply with this order, the Mayor may request the Corporation Counsel to commence appropriate civil action in the District of Columbia Superior Court to secure a temporary restraining order, a preliminary injunction, a permanent injunction, or other appropriate relief. (Mar. 23, 1978, D.C. Law 2-64, § 11, 24 DCR 6289.)

Legislative History of Law 2-64. See note to § 6-521.

§ 6-531. Penalties.

(a) Whenever the Mayor has reason to believe that there has been a violation of this chapter or of the rules and regulations promulgated pursuant thereto, the Mayor may, in lieu of, or in addition to any other enforcement procedure, give written notice of such alleged violation to the person or persons responsible therefor, and order these persons to take such corrective measures as are deemed reasonable and necessary. This notice shall state the nature of the violation and shall allow reasonable time for the performance of the necessary corrective measures. If a person fails to comply with this notice within the time period stated in the notice, the Mayor shall institute such action as may be necessary to terminate the violation.

(b) Notwithstanding any other provision of this chapter, any person who violates any provision of this chapter or of the rules and regulations promulgated pursuant thereto shall be punished by a fine not to exceed ten thousand dollars (\$10,000) or imprisonment not to exceed six (6) months, or both. In the event of any violation, each and every day of such violation shall constitute a separate offense, and the penalties prescribed herein shall be applicable to each such separate offense. (Mar. 23, 1978, D.C. Law 2-64, § 12, 24 DCR 6289.)

Legislative History of Law 2-64. See note to § 6-521.

§ 6-532. Severability.

Each separate provision of this chapter shall be deemed independent of any other provision of this chapter, and if any provision, sentence, clause, section, or part thereof is held illegal, invalid, or unconstitutional or inapplicable to any person or circumstance, such illegality, invalidity, unconstitutionality, or inapplicability shall not affect or impair any of the remaining provisions, sentences, clauses, sections, or parts of this chapter or their application to other parts or circumstances. It is hereby declared to be the legislative intent that this chapter would have been enacted if such illegal, invalid, or unconstitutional provision, sentence, clause, section, or part had not been included therein, and if the person or circumstances to which this chapter or any part thereof is inapplicable had been specifically exempted therefrom. (Mar. 23, 1978, D.C. Law 2-64, § 13, 24 DCR 6289.)

Legislative History of Law 2-64. See note to § 6-521.

CHAPTER 12.—OFFICE OF CIVIL DEFENSE

§ 6-1203. Powers and duties.

NOTES TO DECISIONS

Cited in *Bethel v. Jefferson* (1978, 589 F.2d 631).

CHAPTER 18.—FIREARMS CONTROL

Subchapter I.—General Provisions	Subchapter IV.—Licensing of Firearms Businesses
Sec.	Sec.
6-1802. Definitions.	6-1846. Procedure for denial and revocation of dealer's license.
Subchapter II.—Firearms and Destructive Devices	6-1849. Certain information obtained from or retained by dealers not to be used as evidence in criminal proceedings.
6-1812. Registration of certain firearms prohibited.	Subchapter V.—Sale and Transfer of Firearms, Destructive Devices, and Ammunition
6-1813. Qualifications for registration — Information required for registration.	6-1851. Sales and transfers prohibited.
6-1814. Fingerprints and photographs of applicants — Application in person required.	6-1852. Permissible sales and transfers.
6-1816. Time for filing registration applications.	Subchapter VI.—Possession of Ammunition
6-1817. Issuance of registration certificate — Time period — Corrections.	6-1861. Persons permitted to possess ammunition.
6-1820. Procedure for denial and revocation of registration certificate.	Subchapter VII.—Miscellaneous
6-1821. Certain information not to be used as evidence in criminal proceedings.	6-1878. Construction.
Subchapter III.—Estates Containing Firearms	
6-1831. Rights and responsibilities of executors and administrators.	

Subchapter I.—General Provisions

§ 6-1801. Findings and purpose.

NOTES TO DECISIONS

Firearms control law valid. — The validity of this chapter can be sustained under the District of Columbia Council's newly conferred power set forth in § 1-144(a) of the home rule statute notwithstanding the limitation contained in § 1-147(a)(9), which is merely a time constraint on the Council's authority to make changes, modifications or amendments in local criminal statutes until such time as a local law revision commission could make a complete reevaluation and revision of the District's Criminal Code. *McIntosh v. Washington* (D.C. 1978, 395 A.2d 744).

The Firearms Control Regulations Act (§ 6-1801 et seq.) constitutes a legitimate exercise of the authority vested in the District of Columbia Council by § 1-227. *McIntosh v. Washington* (D.C. 1978, 395 A.2d 744).

And does not conflict with Title 22. — No direct and positive conflict is apparent between the Firearms Control Regulations Act of 1975 (§ 6-1801 et seq.) and Chapter 32 of Title 22, which regulates weapons. *McIntosh v. Washington* (D.C. 1978, 395 A.2d 744).

§ 6-1802. Definitions.

As used in this chapter the term—

This chapter is not unconstitutionally vague. *McIntosh v. Washington* (D.C. 1978, 395 A.2d 744).

Purpose of chapter. — Enacted as a comprehensive regulatory scheme for control of the use and sale of firearms in the District of Columbia, the purpose of this chapter is to freeze the handgun population within the District by expanding and strengthening preexisting firearm registration standards and to prescribe minor criminal penalties for the violation of its provisions. *McIntosh v. Washington* (D.C. 1978, 395 A.2d 744).

Act repeals not Code sections but regulations. — Section 708 of the Firearms Control Regulations Act of 1975 (set out as a note under this section in the 1978 Supplement) makes explicit the Council's intention to repeal not part of Title 22 of the District of Columbia Code, but rather those police regulations which have historically established the gun control framework for this jurisdiction. *McIntosh v. Washington* (D.C. 1978, 395 A.2d 744).

(3) “Antique firearm” means—

* * * * *

(B) any replica of any firearm described in subparagraph (A) if such replica—

(i) is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition, or

(ii) uses rimfire or conventional ammunition which is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade.

* * * * *

(15) “Sawed-off shotgun” means a shotgun having a barrel of less than 20 inches in length; or a firearm made from a shotgun if such firearm as modified has an overall length of less than 26 inches or any barrel of less than 20 inches in length.

* * * * *

(As amended Mar. 16, 1978, D.C. Law 2-62, § 2, 24 DCR 5780.)

Effect of Amendment.
1978 — Act March 16, 1978, D.C. Law 2-62, amended section by striking “(1)” in paragraph (B) of subsection (3) and inserting “(A)” in lieu thereof and by striking “18” throughout subsection (15) and inserting “20” in lieu thereof.
Legislative History of Law 2-62. Law 2-62 was introduced in Council and assigned Bill No. 2-194, which was referred to the Committee on the Judiciary. The Bill

was adopted on first and second readings on October 11, 1977 and October 25, 1977, respectively. Signed by the Mayor on January 3, 1978, it was assigned Act No. 2-129 and transmitted to both Houses of Congress for its review.
Short title. The first section of the act of March 16, 1978, D.C. Law 2-62, provided: “That this act may be cited as the ‘Firearms Control Regulations Act Technical Amendments Act of 1977.’ ”

NOTES TO DECISIONS

Cited in *McIntosh v. Washington* (D.C. 1978, 395 A.2d 744).

Subchapter II.—Firearms and Destructive Devices

§ 6-1811. Registration requirements.

NOTES TO DECISIONS

Security services allowed. — Subsection (a) specifically allows an organization providing armed and unarmed security services to clients to furnish properly registered firearms to special police officers during duty hours and allows the commissioned special police officers of such an organization to maintain their firearms in a loaded usable condition during duty hours. *McIntosh v. Washington* (D.C. 1978, 395 A.2d 744).
And recreational activities. — The District of Columbia Council intended that both residents and

nonresidents of the District be allowed to participate in recreational activities within the meaning of subsection (b)(3) so long as their firearms are validly registered in their respective jurisdictions and meet local safety criteria. *McIntosh v. Washington* (D.C. 1978, 395 A.2d 744).
Cited in *United States v. Dixon* (1978, 446 F. Supp. 58).

§ 6-1812. Registration of certain firearms prohibited.

No registration certificate shall be issued for any of the following types of firearms:

* * * * *

(d) Pistol not validly registered to the current registrant in the District prior to September 24, 1976: Provided, that the provisions of this subsection shall not apply to any organization which has in its employ one (1) or more commissioned special police officers or other employees licensed to carry firearms, and which arms such employees with firearms during such employees’ duty hours.

(e) Repealed. Mar. 16, 1978, D.C. Law 2-62, § 2, 24 DCR 5780.
(As amended Mar. 16, 1978, D.C. Law 2-62, § 2, 24 DCR 5780.)

Effect of Amendment.

1978 — Act March 16, 1978, D.C. Law 2-62, amended section by adding the proviso at the end of subsection (d) and by striking subsection (e).

Legislative History of Law 2-62. See note to § 6-1802.

NOTES TO DECISIONS

Cited in *McIntosh v. Washington* (D.C. 1978, 395 A.2d 744).

§ 6-1813. Qualifications for registration — Information required for registration.

(a) No registration certificate shall be issued to any person (and in the case of a person between the ages of 18 and 21, to the person and his signatory parent or guardian) or organization unless the Chief determines that such person (or the president or chief executive in the case of an organization):

* * * * *

(6) Within the five years immediately preceding the application, has not been voluntarily or involuntarily committed to any mental hospital or institution: Provided, that this paragraph shall not apply, if such person shall present to the Chief with the applicant a medical certification that the applicant has recovered from whatever malady prompted such commitment;

* * * * *

(10) Has not failed to demonstrate satisfactorily a knowledge of the laws of the District of Columbia pertaining to firearms and the safe and responsible use of the same in accordance with tests and standards prescribed by the Chief: Provided, that once this determination is made with respect to a given applicant for a particular type of firearm, it need not be made again for the same applicant with respect to a subsequent application for the same type of firearms: Provided, further, that this paragraph shall not apply with respect to any firearm re-registered pursuant to section 6-1816; and

(11) Has vision better than or equal to that required to obtain a valid driver's license under the laws of the District of Columbia: Provided, that current licensure by the District of Columbia, of the applicant to drive, shall be prima facie evidence that such applicant's vision is sufficient and, provided further, that this determination shall not be made with respect to persons applying to re-register any firearm pursuant to section 6-1816.

* * * * *

(As amended Mar. 16, 1978, D.C. Law 2062, § 2, 24 DCR 5780.)

Effect of Amendment.

1978 — Act March 16, 1978, D.C. Law 2-62, amended section by striking "voluntary" in paragraph (6) of subsection (a) and inserting "voluntarily" in lieu thereof, by striking the phrase "for the same type of firearm; and" in paragraph (10) of subsection (a) and inserting the phrase "for the same type of firearms: Provided, further, that this paragraph shall not apply with respect to any firearm

re-registered pursuant to section 6-1816; and" and by changing the proviso in paragraph (11) of subsection (a) to read "Provided further, that this determination shall not be made with respect to persons applying to re-register any firearm pursuant to section 6-1816."

Legislative History of Law 2-62. See note to § 6-1802.
Section referred to in section. 6-1814.

NOTES TO DECISIONS

Cited in *McIntosh v. Washington* (D.C. 1978, 395 A.2d 744).

§ 6-1814. Fingerprints and photographs of applicants — Application in person required.

(a) The Chief may require any person applying for a registration certificate to be fingerprinted if, in his judgment, this is necessary to conduct an efficient and adequate investigation into the matters described in section 6-1813 and to effectuate the purpose of this chapter: Provided, that any person who has been fingerprinted by the Chief within five years prior to submitting the application need not, in the Chief’s discretion, be fingerprinted again if he offers other satisfactory proof of identity.

* * * * *

(As amended Mar. 16, 1978, D.C. Law 2-62, § 2, 24 DCR 5780.)

Effect of Amendment.

1978 — Act March 16, 1978, D.C. Law 2-62, amended section by striking “section 6-1813 (a)” in subsection (a) and inserting in lieu thereof “section 6-1813.”

Legislative History of Law 2-62. See note to § 6-1802.

§ 6-1816. Time for filing registration applications.

(a) An application for a registration certificate shall be filed (and a registration certificate issued) prior to taking possession of a firearm from a licensed dealer or from any person or organization holding a registration certificate therefor. In all other cases, an application for registration shall be filed immediately after a firearm is brought into the District. It shall be deemed compliance with the preceding sentence if such person personally communicates with the Metropolitan Police Department (as determined by the Chief to be sufficient) and provides such information as may be demanded: Provided, that such person files an application for a registration certificate within 48 hours after such communication.

* * * * *

(As amended Mar. 16, 1978, D.C. Law 2-62, § 2, 24 DCR 5780.)

Effect of Amendment.

1978 — Act March 16, 1978, D.C. Law 2-62, amended section by striking the “s” at the end of the word “certificates” in subsection (a).

Legislative History of Law 2-62. See note to § 6-1802.

Section referred to in section. 6-1813.

NOTES TO DECISIONS

Section does not impermissibly burden interstate commerce. — The phrase “brought into the District” in the second sentence of subsection (a) does not refer to firearms packaged in their original shipping containers that are transported in interstate commerce in a bona fide shipment; thus this chapter does not totally exclude lawful articles of interstate commerce. *McIntosh v. Washington* (D.C. 1978, 395 A.2d 744).

To the extent that the statute requires that a shipper of firearms obtain a local dealer’s license if he remains in the District for a time period longer than a mere brief stop en route to another jurisdiction, the burden on interstate commerce is slight and not unreasonable since the interest served is a legitimate local concern. *McIntosh v. Washington* (D.C. 1978, 395 A.2d 744).

Purpose of section. — This section is designed to require those obtaining firearms in the District of Columbia or nonresidents who move into the District with registerable firearms to register them promptly. *McIntosh v. Washington* (D.C. 1978, 395 A.2d 744).

§ 6-1817. Issuance of registration certificate — Time period — Corrections.

(a) Upon receipt of a properly executed application for registration certificate, the Chief, upon determining through inquiry, investigation, or otherwise, that the applicant is entitled and

qualified under the provisions of this chapter, thereto, shall issue a registration certificate. Each registration certificate shall be in duplicate and bear a unique registration certificate number and such other information as the Chief determines is necessary to identify the applicant and the firearm registered. The duplicate of the registration certificate shall be delivered to the applicant and the Chief shall retain the original.

* * * * *

(c) Upon receipt of a registration certificate, each applicant shall examine same to ensure that the information thereon is correct. If the registration certificate is incorrect in any respect, the person or organization named thereon shall return it to the Chief with a signed statement showing the nature of the error. The Chief shall correct the error, if it occurred through administrative error. In the event the error resulted from information contained in the application, the applicant shall be required to file an amended application setting forth the correct information, and a statement explaining the error in the original application. Each amended application shall be accompanied by a fee equal to that required for the original application.

* * * * *

(As amended Mar. 16, 1978, D.C. Law 2-62, § 2, 24 DCR 5780.)

Effect of Amendment.
1978 — Act March 16, 1978, D.C. Law 2-62, amended section by capitalizing “upon” in subsection (a) and by

striking “names” in the second sentence of subsection (c) and inserting “named” in lieu thereof.
Legislative History of Law 2-62. See note to § 6-1802.

§ 6-1820. Procedure for denial and revocation of registration certificate.

* * * * *

(c) Within seven days of a decision unfavorable to the applicant or registrant becoming final, the applicants or registrant shall (1) peaceably surrender to the Chief the firearm for which the registration certificate was revoked in the manner provided in section 6-1875, or (2) lawfully remove such firearm from the District for so long as he has an interest in such firearm, or, (3) otherwise lawfully dispose of his interest in such firearm.

(As amended Mar. 16, 1978, D.C. Law 2-62, § 2, 24 DCR 5780.)

Effect of Amendment.
1978 — Act March 16, 1978, D.C. Law 2-62, amended section by replacing the reference to section 6-1874 in subsection (c) with a reference to section 6-1875.

Legislative History of Law 2-62. See note to § 6-1802. Section referred to in section. 6-1851.

NOTES TO DECISIONS

Contested case procedures apply. — Subsection (b) and § 6-1846(b) refer to the Court of Appeal’s direct review jurisdiction under the Administrative Procedure Act

(§ 1-1501 et seq.), which jurisdiction can only be exercised at the conclusion of “contested case” procedures. *McIntosh v. Washington* (D.C. 1978, 395 A.2d 744).

§ 6-1821. Certain information not to be used as evidence in criminal proceedings.

No information obtained from a person under this subchapter or retained by a person in order to comply with any section of this subchapter, shall be used as evidence against such person in any criminal proceeding with respect to a violation of this chapter, occurring prior to or concurrently with the filing of the information required by this subchapter: Provided, that this section shall not apply to any violation of section 22-2501, or section 6-1874. (Sept. 24, 1976, D.C. Law 1-85, title II, § 211, 23 DCR 2464; Mar. 16, 1978, D.C. Law 2-62, § 2, DCR 5780.)

Effect of Amendment.

1978 — Act March 16, 1978, D.C. Law 2-62, amended section by replacing reference to section 6-1873 with reference to section 6-1874.

Legislative History of Law 2-62. See note to § 6-1802.

Subchapter III.—Estates Containing Firearms

§ 6-1831. Rights and responsibilities of executors and administrators.

* * * * *

(b) Until the lawful distribution of such firearm to an heir or legatee or the lawful sale, transfer, or disposition of the firearm by the estate, the executor or administrator of such estate shall be charged with the duties and obligations which would have been imposed by this chapter upon the decedent, if the decedent were still alive: Provided, that such executor or administrator shall not be liable to the criminal penalties of section 6-1876.
(As amended Mar. 16, 1978, D.C. Law 2-62, § 2, 24 DCR 5780.)

Effect of Amendment.

1978 — Act March 16, 1978, D.C. Law 2-62, amended section by replacing reference to section 6-1875 in subsection (b) with reference to section 6-1876.

Legislative History of Law 2-62. See note to § 6-1802.

Subchapter IV.—Licensing of Firearms Businesses

§ 6-1846. Procedure for denial and revocation of dealer’s license.

* * * * *

(c) Within 45 days of a decision becoming effective, which is unfavorable to a licensee or to an applicant for a dealer’s license, the licensee or applicant shall—

* * * * *

(2) peaceably surrender to the Chief any firearms in his inventory which he does not register, and all destructive devices in his inventory in the manner provided for in section 6-1875;

* * * * *

(As amended Mar. 16, 1978, D.C. Law 2-62, § 2, 24 DCR 5780.)

Effect of Amendment.

1978 — Act March 16, 1978, D.C. Law 2-62, amended section by correcting reference to section 6-1875 in subsection (c).

Legislative History of Law 2-62. See note to § 6-1802.

NOTES TO DECISIONS

Contested case procedures apply. — Section 6-1820(b) and subsection (b) of this section refer to the Court of Appeal’s direct review jurisdiction under the Administrative Procedure Act (§ 1-1501 et seq.), which jurisdiction can only be exercised at the conclusion of “contested case” procedures. *McIntosh v. Washington* (D.C. 1978, 395 A.2d 744).

§ 6-1849. Certain information obtained from or retained by dealers not to be used as evidence in criminal proceedings.

No information obtained from or retained by a licensed dealer to comply with this subchapter shall be used as evidence against such licensed dealer in any criminal proceeding with respect to a violation of this chapter occurring prior to or concurrently with the filing of such information: Provided, that this section shall not apply to any violation of section 22-2501, or of section 6-1874. (Sept. 24, 1976, D.C. Law 1-85, title IV, § 409, 23 DCR 2464; Mar. 16, 1978, D.C. Law 2-62, § 2, 24 DCR 5780.)

Effect of Amendment.
1978 — Act March 16, 1978, D.C. Law 2-62, amended section by replacing the reference to section 6-1873 with a reference to section 6-1874.

Legislative History of Law 2-62. See note to § 6-1802.

*Subchapter V.—Sale and Transfer of Firearms,
Destructive Devices, and Ammunition*

§ 6-1851. Sales and transfers prohibited.

No person or organization shall sell, transfer or otherwise dispose of any firearm, destructive device or ammunition in the District except as provided in sections 6-1820(c), 6-1852, or 6-1875. (Sept. 24, 1976, D.C. Law 1-85, title V, § 501, 23 DCR 2464; Mar. 16, 1978, D.C. Law 2-62, § 2, 24 DCR 5780.)

Effect of Amendment.
1978 — Act March 16, 1978, D.C. Law 2-62, amended section by inserting 6-1820 (c) before 6-1852, by inserting

a comma after 6-1852 and by correcting the reference to section 6-1875.
Legislative History of Law 2-62. See note to § 6-1802.

§ 6-1852. Permissible sales and transfers.

* * * * *

- (d) Except as provided in subsections (b) and (e), no licensed dealer shall sell or otherwise transfer ammunition unless—
- (1) the sale or transfer is made in person; and
 - (2) the purchaser exhibits, at the time of sale or other transfer, a valid registration certificate, or in the case of a nonresident, proof that the weapon is lawfully possessed in the jurisdiction where such person resides;
 - (3) the ammunition to be sold or transferred is of the same caliber or gauge as the firearm described in the registration certificate, or other proof in the case of nonresident; and
 - (4) the purchaser signs a receipt for the ammunition which (in addition to the other records required under this chapter) shall be maintained by the licensed dealer for a period of one year from the date of sale.

* * * * *

(As amended Mar. 16, 1978, D.C. Law 2-62, § 2, 24 DCR 5780.)

Effect of Amendment.
1978 — Act March 16, 1978, D.C. Law 2-62, amended section by striking “(f)” after the word “and” in subsection (d) and inserting “(e)” in lieu thereof.

Legislative History of Law 2-62. See note to § 6-1802.
Section referred to in section. 6-1851.

NOTES TO DECISIONS

Police equipment company sales regulated but not prohibited. — Under this chapter a police equipment company would not be prohibited from selling handguns to qualified residents, but such sales would be subject to

the Council’s authority to regulate the conduct of the dealers of any dangerous or deadly weapons and to the standards set forth in this section. *McIntosh v. Washington* (D.C. 1978, 395 A.2d 744).

Subchapter VI.—Possession of Ammunition

§ 6-1861. Persons permitted to possess ammunition.

- No person shall possess ammunition in the District of Columbia unless:
- (a) He is a licensed dealer pursuant to subchapter IV;
 - (b) He is an officer, agent, or employee of the District of Columbia or the United States of America, on duty and acting within the scope of his duties when possessing such ammunition;

(c) He is the holder of the valid registration certificate for a firearm of the same gauge or caliber as the ammunition he possesses; or

* * * * *

(As amended Mar. 16, 1978, D.C. Law 2-62, § 2, 24 DCR 5780.)

Effect of Amendment.
1978 — Act March 16, 1978, D.C. Law 2-62, amended section by striking the period at the end of subsections (a), (b), and (c) and inserting a semicolon in lieu thereof and

by inserting the word “or” after the semicolon at the end of subsection (c).
Legislative History of Law 2-62. See note to § 6-1802.

Subchapter VII.—Miscellaneous

§ 6-1872. Firearms required to be unloaded and disassembled or locked.

NOTES TO DECISIONS

Home-business distinction not violative of equal protection. — Since there was a clear rational basis for distinguishing between a home and a business establishment in the firearms control statute, the classification in this section which allows individuals to

maintain an assembled firearm at their places of business but not at home relates to the purpose for which it was made and lacks the kind of discrimination from which the equal protection clause affords protection. *McIntosh v. Washington* (D.C. 1978, 395 A.2d 744).

§ 6-1874. False information — Forgery or alternation.

Section referred to in sections. 6-1821, 6-1849.

§ 6-1875. Voluntary surrender of firearms, destructive devices, or ammunition — Immunity from prosecution — Determination of evidentiary value of firearm.

Section referred to in sections. 6-1846, 6-1851.

§ 6-1876. Penalties.

Section referred to in sections. 6-1831, 6-1878.

NOTES TO DECISIONS

Knowledge of duty to register firearms is not required for conviction of failure to register. *McIntosh v. Washington* (D.C. 1978, 395 A.2d 744).

§ 6-1878. Construction.

Nothing in this chapter shall be construed, or applied to necessarily require, or excuse noncompliance with any provision of any federal law. This chapter and the penalties prescribed in section 6-1876, for violations of this chapter, shall not supersede but shall supplement all statutes of the District and the United States in which similar conduct is prohibited or regulated. (Sept. 24, 1976, D.C. Law 1-85, title VII, § 709, 23 DCR 2464; Mar. 16, 1978, D.C. Law 2-62, § 2, 24 DCR 5780.)

Effect of Amendment.
1978 — Act March 16, 1978, D.C. Law 2-62, amended section by correcting the reference to section 6-1876.

Legislative History of Law 2-62. See note to § 6-1802.

§ 6-1879. Applicability of District of Columbia Administrative Procedure Act.

NOTES TO DECISIONS

Administrative Procedure Act applies without exception. — Nowhere in this chapter is it specifically provided that the Administrative Procedure Act (§ 1-1501 et seq.) shall not apply. *McIntosh v. Washington* (D.C. 1978, 395 A.2d 744).

CHAPTER 20. — YOUTH SERVICES

- Sec.
6-2004. Office of Youth Advocacy.
6-2006. Transfer of positions and funds.

§ 6-2004. Office of Youth Advocacy.

* * * * *

(c) The following positions and their associated funding are hereby authorized to be transferred from the Office of Youth Opportunity Services to the Office of Youth Advocacy:

- | | |
|--|-------|
| 1 Special Assistant to the Mayor
(Subject to the prior approval of the
Civil Service Commission pursuant
to 5 U.S.C. § 5108.) | GS-16 |
| 1 Program Analyst Officer | GS-13 |
| 1 Education Specialist | GS-12 |
| 1 Research Assistant | GS-11 |
| 1 Program Director | GS-11 |
| 2 Field Technical Assistants | GS-9 |
| 1 Computer Program Analyst | GS-11 |
| 2 Program Analysts | GS-9 |
| 1 Secretary | GS-7 |

* * * * *

(As amended Apr. 28, 1978, D.C. Law 2-75, § 2, 24 DCR 7498.)

Effect of Amendment. 1978 — Act April 28, 1978, D.C. Law 2-75, amended section by replacing the last eleven lines in subsection (c) with present last twelve lines. Legislative History of Law 2-75. Law 2-75 was introduced in Council and assigned Bill No. 2-1119, which	was referred to the Committee on Education, Recreation and Youth Affairs. The Bill was adopted on first and second readings on January 24, 1978 and February 7, 1978, respectively. Signed by the Mayor on February 24, 1978, it was assigned Act No. 2-153 and transmitted to both Houses of Congress for its review.
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§ 6-2006. Transfer of positions and funds.

(a) The following positions and their associated funding are hereby transferred from the Office of Youth Opportunity Services to the Department of Manpower:

- | | |
|----------------------------|-------|
| 1 Deputy Director | GS-15 |
| 1 Manpower Specialist | GS-14 |
| 1 Computer Systems Analyst | GS-13 |
| 1 Program Analyst Officer | GS-12 |
| 1 Research Assistant | GS-9 |
| 1 Research Assistant | GS-7 |
| 3 Clerks | GS-4 |

(b) The following positions and their associated funding, initially transferred in the “Budget Act of 1977” to the Department of Manpower, are hereby transferred from the Office of Youth

Opportunity Services to the Department of Recreation for the support of Neighborhood Planning Council programs:

1 Recreation Specialist	GS-14
1 Program Analyst Officer	GS-12
1 Social Science Analyst	GS-11
2 Field Technical Assistants	GS-9
1 Secretary	GS-6
1 Clerk	GS-4

(As amended Apr. 28, 1978, D.C. Law 2-75, § 2, 24 DCR 7498.)

Effect of Amendment.
1978 — Act April 28, 1978, D.C. Law 2-75, amended section by replacing the last nine lines in subsection (a)

with the present last seven lines and by replacing the last four lines in subsection (b) with the present last six lines.
Legislative History of Law 2-75. See note to § 6-2004.

CHAPTER 22.—HUMAN RIGHTS

Subchapter III.—Procedures

§ 6-2281. Authority of the Director and Commission.

NOTES TO DECISIONS

DECISIONS UNDER PRIOR LAW

Federal suit barred for failure to seek local relief. — Failure of plaintiff to seek relief first from the Office of Human Rights precluded his federal suit alleging age discrimination in employment since the District's

administrative scheme met the requirements of 29 U.S.C. § 633 (b) which mandates a preliminary resort to state remedies. *Enos v. Kaiser Indus. Corp.* (1978, 443 F. Supp. 798).

CHAPTER 23.—ENERGY RESOURCES SHORTAGES

Sec. 6-2301. Definitions.	Sec. 6-2303. Applicability of contested case provision of the Administrative Procedure Act.
6-2302. Penalties — Prosecution of violations — Authority to implement federal mandatory allocation program.	

§ 6-2301. Definitions.

- (a) As used in this chapter, the words “crisis”, “disaster”, “catastrophe”, and “or similar public emergency” refer to a situation where the health, safety, or welfare of citizens of the District of Columbia is threatened by reason of an actual or impending acute shortage in usable energy resources.

(b) Upon reasonable apprehension of the existence of a public emergency and the determination by the Mayor that the issuance of an order is necessary for the immediate preservation of the public peace, health, safety, or welfare, the Mayor shall issue an emergency executive order stating: (1) the existence, nature, extent, and severity of the emergency; (2) the measures necessary to relieve the emergency; (3) the specific requirements of the order and the persons upon whom the order is binding; and (4) the duration of the order.

(c) An emergency executive order may direct any person or group, or class of persons, in the District to reduce or otherwise alter the hours during which they conduct business or similar activity at premises established and maintained for a business, public, or other purpose, adjust temperature requirements, and may relate the requirements established in the emergency executive order to the number of persons participating in the conduct of such business or similar activity. In the case of a business or activity that is conducted at more than one location or

address, the total number of persons regularly engaged at each such location or address during a regular working day shall be used for purposes of determining the applicability of such emergency executive order.

(d) Notwithstanding any provision of the Air Quality Control Regulations of the District of Columbia, Regulation 72-12, effective July 7, 1972, as amended, the Mayor may, by issuance of the emergency executive order, direct any person, group, or class of persons in the District of an emergency executive order, direct any person, group, or class of persons in the District emergency executive order is in effect.

(e) Any emergency executive order shall be effective for a period of no more than fifteen (15) calendar days from the day it is signed by the mayor, but may be rescinded by the Mayor within that period should the Mayor determine that the public emergency no longer exists.

(f) Any emergency executive order may be extended at the conclusion of the fifteen (15) day period only upon request by the Mayor for the adoption of an emergency act by the Council of the District of Columbia. The issuance of such an extension shall be based upon the conditions, and include the terms, required by subsection (b) of this section.

(g) Upon the entry of any such emergency executive order or the adoption of an emergency act by the Council of the District of Columbia, the Mayor shall forthwith cause the order or act to be published in the District of Columbia Register, in two (2) daily newspapers of general circulation in the District of Columbia, and cause the posting of the order or act in public places in the District of Columbia.

(h) The Mayor may adopt and implement such rules and regulations as he or she may find to be necessary and appropriate to carry out the purposes of this chapter pursuant to the District of Columbia Administrative Procedure Act (D.C. Code, sec. 1-1501 et seq.). These rules and regulations shall provide for procedures to identify the public emergency apprehension provided in subsection (b) of this section and plans for the implementation of this chapter. In proposing rules and regulations to carry out the purposes of this chapter, the Mayor shall give appropriate consideration to energy savings programs of retail establishments and of the need for special provisions concerning suppliers of essential services, such as energy suppliers and regulated public utilities and health care facilities.

(i) The Mayor may establish and implement regional programs and agreements for the coordination of energy resource programs and actions of the District of Columbia, taken pursuant to this chapter, with those of the federal government and other jurisdictions. (Apr. 20, 1978, D.C. Law 2-74, § 2, 24 DCR 9501.)

Legislative History of Law 2-74. Law 2-74 was introduced in Council and assigned Bill No. 2-124, which was referred to the Committee on Government Operations and to the Committee on Transportation and Environmental Affairs for comments. The Bill was adopted on first and second readings on October 11, 1977

and October 25, 1977, respectively. Signed by the Mayor on January 11, 1978, it was assigned Act No. 2-152 and transmitted to both Houses of Congress for its review.

Short title. The first section of the act of Apr. 20, 1978, D.C. Law 2-74, provided "That this act may be cited as the 'Energy Resources Shortages Act of 1977.'"

§ 6-2302. Penalties — Prosecution of violations — Authority to implement federal mandatory allocation program.

An emergency executive order promulgated by the Mayor or an emergency act of the Council adopted pursuant hereto may provide for the imposition of a civil penalty, not to exceed one thousand dollars (\$1,000) for each violation, in lieu of or in addition to the criminal penalties provided herein, and for the method and conditions of its collection. Violations of any order, rule or regulation adopted by the Mayor, or an emergency act of the Council of the District of Columbia adopted pursuant to this authority, shall be prosecuted in the name of the District of Columbia by the Corporation Counsel or any of his or her assistants. In addition to the specific emergency powers provided herein, the Mayor or Council of the District of Columbia has full authority to implement the federal mandatory allocation program as set forth in the Emergency Petroleum Allocation Act of 1973 (87 Stat. 627), as well as succeeding federal programs, laws,

orders, rules, or regulations relating to the allocation, conservation, or consumption of energy resources, as provided in this chapter. (Apr. 20, 1978, D.C. Law 2-74, § 3, 24 DCR 9501.)

Legislative History of Law 2-74. See note to § 6-2301.

§ 6-2303. Applicability of contested case provision of the Administrative Procedure Act.

No emergency executive order promulgated by the Mayor pursuant to this chapter shall be subject to the contested case provisions of the District of Columbia Administrative Procedure Act (D.C. Code, sec. 1-1509). (Apr. 20, 1978, D.C. Law 2-74, § 4, 24 DCR 9501.)

Legislative History of Law 2-74. See note to § 6-2301.

TITLE 7.—HIGHWAYS, STREETS, BRIDGES

Chap.	Sec.
6. Repair and Construction	7-601
14. Public Airport	7-1401

CHAPTER 6.—REPAIR AND CONSTRUCTION

Sec.
7-615. Cutting trenches in highways — Reservation or public space without permit prohibited — Inapplicable to public buildings.
7-616. Penalty — Prosecution.

§ 7-615. Cutting trenches in highways — Reservation or public space without permit prohibited — Inapplicable to public buildings.

It shall be unlawful for any person to make any cut or trench in any highway, reservation, or public space in the District of Columbia, or to disturb or remove any public work or material therein, without a permit so to do from the Mayor of the District of Columbia. The person obtaining such a permit shall abide by all conditions and provisions of the permit: Provided, that nothing in this section shall be construed to apply to public buildings of the United States, or to diminish the authority of the officer in charge of public buildings and grounds, or the Architect of the Capitol. (June 18, 1898, 30 Stat. 477, ch. 467, § 7; Sept. 13, 1978, D.C. Law 2-105, § 2, 25 DCR 1982.)

Effect of amendment.
1978 — Act Sept. 13, 1978, D.C. Law 2-105, amended section by deleting the colon before the word “Provided” and inserting in lieu thereof a period and “The person obtaining such a permit shall abide by all conditions and provisions of the permit: ”.
Legislative History of Law 2-105. Law 2-105 was introduced in Council and assigned Bill No. 2-246, which

was referred to the Committee on Public Services and Consumer Affairs. The Bill was adopted on first and second readings on May 30, 1978 and June 13, 1978, respectively. Signed by the Mayor on July 5, 1978, it was assigned Act No. 2-217 and transmitted to both Houses of Congress for its review.

§ 7-616. Penalty — Prosecution.

Any person violating any of the provisions of section 7-615 shall on conviction thereof in the Superior Court of the District of Columbia be punished by a fine of not less than one hundred dollars nor more than one thousand dollars; and in default of payment of such fine such person shall be confined in the workhouse of the District of Columbia for a period not exceeding six months; and all prosecutions shall be in the Superior Court of the District of Columbia, in the name of the District of Columbia. (June 18, 1898, 30 Stat. 477, ch. 467, § 8; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, Pub. L. 91-358, title I, § 155(a), 84 Stat. 570; Sept. 13, 1978, D.C. Law 2-105, § 3, 25 DCR 1982.)

Effect of Amendment.
1978 — Act Sept. 13, 1978, D.C. Law 2-105, amended section by deleting “five dollars nor more than one

hundred dollars;” and inserting in lieu thereof “one hundred dollars nor more than one thousand dollars; ”.
Legislative History of Law 2-105. See note to § 7-615.

CHAPTER 14.—PUBLIC AIRPORT

§ 7-1401. Construction and operation of airport authorized.

NOTES TO DECISIONS

Federal statute. — The Second Washington Airport Act (§ 7-1401 et seq.) is a federal statute and should not be considered a local District of Columbia statute. *Executive Limousine Serv., Inc. v. Adams* (1978, 450 F. Supp. 579).

§ 7-1406. Contracts for supplies and services.**NOTES TO DECISIONS**

Contract valid despite interference with local agency's authority. — The Federal Aviation Administration's contractual grant of exclusive rights to a bus company for bus transportation from Dulles International Airport to points in the District of Columbia

was valid and enforceable even though it impinged on the regulatory authority of the Washington Metropolitan Area Transit Commission. *Executive Limousine Serv., Inc. v. Adams* (1978, 450 F. Supp. 579).

TITLE 8.—PARKS AND PLAYGROUNDS

Chap.	Sec.
1. Parks and Playgrounds	8-101

CHAPTER 1.—PARKS AND PLAYGROUNDS

§ 8-108. Park system — Control — Inclusions — Exclusions, improvements, parking spaces — “Business streets” — Conditions requisite.

NOTES TO DECISIONS

Applicability of local laws to federal concessionaires.
— The Secretary of the Interior’s exclusive control over the shuttle service between the Mall and the Stadium under 40 U.S.C. § 804 precluded application to a federal concessionaire of local District of Columbia laws relating

to vehicle registration and inspection and tour guide licensing but did not preclude application of local laws relating to certification of foreign corporations. *United States v. District of Columbia* (1977, 571 F.2d 651, 187 U.S. App. D.C. 217).



TITLE 9.—PUBLIC BUILDINGS AND GROUNDS

Cross reference. For smoke detector requirements, see § 5-328 et seq.

Chap.	Sec.
3. Sale of Public Lands	9-301

CHAPTER 3.—SALE OF PUBLIC LANDS

§ 9-301. Commissioner authorized to sell real estate.

Conveyance of property. Pursuant to authority of section, act March 16, 1978, D.C. Law 2-63, 24 DCR 6039, conveying square 491 to the Pennsylvania Avenue Development Corporation, was adopted.

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TITLE 10.—WEIGHTS, MEASURES, AND MARKETS

Chap.	Sec.
2. Retail Service Stations	10-201

CHAPTER 2.—RETAIL SERVICE STATIONS

*Subchapter III.—Moratorium on Conversions to Limited
Service Retail Service Stations*

§ 10-231. Prohibition on conversions.

Emergency Act Amendment. 1978 — For temporary amendment of section, see sec. 2 of the Moratorium on Retail Service Station Conversions	Emergency Act of 1978 (D.C. Act 2-329, Dec. 29, 1978, 25 DCR 7007).
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Part II

Judiciary and Judicial Procedure

- TITLE 11. ORGANIZATION AND JURISDICTION OF THE COURTS.
- TITLE 12. RIGHT TO REMEDY.
- TITLE 13. PROCEDURE GENERALLY.
- TITLE 14. PROOF.
- TITLE 16. PARTICULAR ACTIONS, PROCEEDINGS AND MATTERS.
- TITLE 17. REVIEW.

TITLE 11.—ORGANIZATION AND JURISDICTION OF THE COURTS

Cross reference. For adjudication of certain traffic offenses, see § 40-1101 et seq.

Chap.	Sec.
1. General Provisions	11-101
5. United States District Court for the District of Columbia	11-501
7. District of Columbia Court of Appeals	11-701
9. Superior Court of the District of Columbia	11-901
11. Family Division of the Superior Court	11-1101
19. Juries and Jurors	11-1901
25. Attorneys	11-2501
26. Representation of Indigents in Criminal Cases	11-2601

CHAPTER 1.—GENERAL PROVISIONS

§ 11-101. Judicial power.

NOTES TO DECISIONS

Purpose of court reform law. — Underlying the District of Columbia Court Reform and Criminal Procedure Act of 1970 (§ 11-101 et seq.) was Congress' wish to delineate the functions of the federal and local court systems in the District of Columbia. *Reichman v. Franklin Simon Corp.* (D.C. 1978, 392 A.2d 9).

All Writs Act (28 U.S.C. § 1651) **applies** to the local District of Columbia courts. *Christian v. United States* (D.C. 1978, 394 A.2d 1).

Superior Court may issue extraterritorial writs in aid of its authorized jurisdiction. *Christian v. United States* (D.C. 1978, 394 A.2d 1).

Cited in *McIntosh v. Washington* (D.C. 1978, 395 A.2d 744); *Hackney v. United States* (D.C. 1978, 389 A.2d 1336); *Jameson's Liquors, Inc. v. District of Columbia Alcoholic Beverage Control Bd.* (D.C. 1978, 384 A.2d 412).

§ 11-102. Status of District of Columbia Court of Appeals.

NOTES TO DECISIONS

Court of Appeals akin to state supreme court. — The Court of Appeals's status is that of a state supreme court. *Hickey v. District of Columbia Court of Appeals* (1978, 457 F. Supp. 584).

Cited in *Jefferson v. United States* (D.C. 1978, 382 A.2d 1030).

CHAPTER 5.—UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Subchapter I.—Jurisdiction

§ 11-501. Civil jurisdiction.

NOTES TO DECISIONS

Meaning of “civil action”. — The phrase “civil action” in subdivision (4) has the same broad meaning that it has in the Federal Rules of Civil Procedure. *Rieser v. District of Columbia* (1978, 580 F.2d 647, 188 U.S. App. D.C. 384).

Third-party practice within federal courts’ jurisdiction. — Third-party practice generated in the natural course of \$50,000-plus suits under subdivision (4) remains within the jurisdiction of the United States courts for the duration of the third-party practice and the original suit. *Rieser v. District of Columbia* (1978, 580 F.2d 647, 188 U.S. App. D.C. 384).

Where a plaintiff’s complaint against a third-party defendant formed an integral part of a civil action brought for the purpose of assigning liability and awarding damages, and that action had commenced with the filing in the District Court of an original complaint during the 30-month period under subdivision (4), the third-party practice fell within the District Court’s local jurisdiction under this section. *Rieser v. District of Columbia* (1978, 580 F.2d 647, 188 U.S. App. D.C. 384).

Cited in *Husovsky v. United States* (1978, 590 F.2d 944); *Safer v. Perper* (1977, 569 F.2d 87, 186 U.S. App. D.C. 256).

§ 11-502. Criminal jurisdiction.

NOTES TO DECISIONS

Cited in *Rieser v. District of Columbia* (1978, 580 F.2d 647, 188 U.S. App. D.C. 384).

CHAPTER 7.—DISTRICT OF COLUMBIA COURT OF APPEALS

Subchapter II.—Jurisdiction

§ 11-721. Orders and judgments of the Superior Court.

NOTES TO DECISIONS

“Final” construed. — For purposes of appeal an order is final only if it disposes of an entire case on the merits, leaving nothing for the court to do but execute the judgment it has rendered. *Burtoff v. Burtoff* (D.C. 1978, 390 A.2d 989); *District of Columbia v. Tschudin* (D.C. 1978, 390 A.2d 986).

Final judgments are not limited to the last order in a proceeding. *District of Columbia v. Tschudin* (D.C. 1978, 390 A.2d 986).

Order treated as final. — Trial court orders which threaten the integrity of the judicial process may be treated as final for the purpose of review. *Weisberg v. Williams, Connolly & Califano* (D.C. 1978, 390 A.2d 992).

No final judgment. — In an action by a wife for separate maintenance a determination of the validity of an antenuptial agreement, interposed as an affirmative defense, was not a final judgment because the exact amount of the husband’s support obligation had been left for future determination. *Burtoff v. Burtoff* (D.C. 1978, 390 A.2d 989).

Appeal dismissed where appellant not aggrieved party. — A hospital superintendent could not appeal a trial

court’s order releasing one whom he had sought unsuccessfully to have judicially hospitalized under § 21-501 et seq. because the superintendent was not an aggrieved party within the meaning of subsection (b) and any such right of appeal would also be contrary to the design and intent of § 21-501 et seq. *In re Lomax* (D.C. 1978, 386 A.2d 1185).

An executor directed by court order to collect a decedent’s share of the proceeds of the sale of a real estate venture and to include those proceeds in the assets of the estate rather than distributing them to one of the decedent’s creditors was not aggrieved by an order which denied priority status to a creditor but was in no way a decision adverse to the estate or to the executor as its representative; hence his appeal was dismissed. *In re Estate of Jacobson* (D.C. 1978, 387 A.2d 590).

Cited in *Hsu v. United States* (D.C. 1978, 392 A.2d 972); *Sellman v. United States* (D.C. 1978, 386 A.2d 303); *In re D.L.J.* (D.C. 1978, 383 A.2d 1081).

§ 11-722. Administrative orders and decisions.

NOTES TO DECISIONS

Zoning decision final despite motion for reconsideration. — Election to file a motion for reconsideration with the Board of Zoning Appeals prior to petitioning the District of Columbia Court of Appeals for

review did not affect the finality of the Board's decision. *Kenmore Joint Venture v. District of Columbia Bd. of Zoning Adjustment* (D.C. 1978, 391 A.2d 269).

And review proper where Board ultimately denied reconsideration. — Considerations of finality did not require the reviewing court to withhold its jurisdiction to review an administrative order of the Board of Zoning Appeals where a motion for reconsideration filed with the Board was ultimately denied. *Kenmore Joint Venture v.*

District of Columbia Bd. of Zoning Adjustment (D.C. 1978, 391 A.2d 269).

Cited in *Washington Pub. Interest Organization v. Public Serv. Comm'n* (D.C. 1978, 393 A.2d 71); *Arellano v. District of Columbia Police & Firemen's Retirement & Relief Bd.* (D.C. 1978, 384 A.2d 29); *Wieck v. District of Columbia Bd. of Zoning Adjustment* (D.C. 1978, 383 A.2d 7).

CHAPTER 9.—SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

Subchapter II.—Jurisdiction

§ 11-921. Civil jurisdiction.

NOTES TO DECISIONS

Effect of section on jurisdiction of Superior and District Courts. — This section gives the Superior Court plenary jurisdiction over civil matters brought in the District of Columbia and correspondingly limits the civil jurisdiction of the District Court to those special matters of which the federal district courts nationwide may take cognizance. *Reichman v. Franklin Simon Corp.* (D.C. 1978, 392 A.2d 9).

Jurisdiction over action for visitation rights stems from general equitable powers of the Superior Court rather than from § 11-1101, which relates to the jurisdiction of the Family Division of the Superior Court. *Felder v. Allsopp* (D.C. 1978, 391 A.2d 243).

Cited in *Rieser v. District of Columbia* (1978, 580 F.2d 647, 188 U.S. App. D.C. 384); *Campbell v. McGruder* (1978, 580 F.2d 521, 188 U.S. App. D.C. 258).

§ 11-922. Transfer of civil actions to Superior Court.

NOTES TO DECISIONS

Case may be transferred in interlocutory posture. — “Action” as used in subsection (b) refers not only to a case prior to rulings and interlocutory orders but also to a case in any posture prior to disposition, and a case may be transferred to Superior Court in an interlocutory posture. *Reichman v. Franklin Simon Corp.* (D.C. 1978, 392 A.2d 9).

Transferred case treated as if originated in Superior Court. — Congress intended that cases transferred under subsection (b) be treated as if they had been brought initially in Superior Court. *Reichman v. Franklin Simon Corp.* (D.C. 1978, 392 A.2d 9).

Even as to interlocutory rulings. — Where the District Court has entered an interlocutory order, subsequent transfer of the case under subsection (b) empowers the Superior Court to treat the order as its own and empowers review of the order on appeal. *Reichman v. Franklin Simon Corp.* (D.C. 1978, 392 A.2d 9).

Cited in *Rieser v. District of Columbia* (1978, 580 F.2d 647, 188 U.S. App. D.C. 384).

§ 11-923. Criminal jurisdiction; commitment.

NOTES TO DECISIONS

Presumption of jurisdiction in court where charge filed. — It is presumed that an offense charged was committed within the jurisdiction of the court in which the charge is filed unless the evidence affirmatively shows otherwise. *Adair v. United States* (D.C. 1978, 391 A.2d 288).

Language suggests geographical limitation on jurisdiction. — Section 11-1101 governing Family Division jurisdiction lacks the language of subsection (b) (1) of this section suggesting a geographical limitation. *In re A.S.W.* (D.C. 1978, 391 A.2d 1385).

Locality of crime includes place where part of act done. — Wherever any part of a criminal act is done, that place becomes as much the locality of the crime as is the place where the crime may have culminated. *Adair v. United States* (D.C. 1978, 391 A.2d 288).

Trial court had jurisdiction where the defendant, convicted of armed robbery, assault with a dangerous

weapon and mayhem and malicious disfigurement, approached complainant in his car within the District of Columbia, rode with complainant into Maryland, returned with him to the District and was overheard threatening the complainant with injury if he did not remain silent while at an intersection concededly within the District. *Adair v. United States* (D.C. 1978, 391 A.2d 288).

Local courts may issue writs of habeas corpus ad prosequendum. — Since Congress in reforming the District of Columbia court system could not have intended to remove the local courts' power to issue writs of habeas corpus ad prosequendum, that authority still exists under the All Writs Act (28 U.S.C. § 1652). *United States v. Cogdell* (1978, 585 F.2d 1130).

Subchapter III.—Miscellaneous Provisions

§ 11-941. Issuance of warrants; record.

NOTES TO DECISIONS

Warrant issued outside District for execution within. — This section does not prevent a judge from issuing, outside the District, a search warrant for execution in the District. *United States v. Strother* (1978, 578 F.2d 397, 188

U.S. App. D.C. 155), approving *United States v. Coates* (D.C. Super. 1978, 106 Daily Wash. L. Rep., No. 34, p. 313).
Cited in *United States v. Boettcher* (1978, 588 F.2d 89).

§ 11-942. Subpoenas.

NOTES TO DECISIONS

Purpose of Subsection (b). — Subsection (b) was enacted so that in felony cases the Superior Court would have the same subpoena power conferred on federal district courts. *Christian v. United States* (D.C. 1978, 394 A.2d 1).
Was to differentiate between felony and misdemeanor cases. — The language “in which a felony is charged” in subsection (b) was not meant to deprive Superior Court grand juries investigating felony cases of nationwide subpoena power but rather was included only to differentiate between misdemeanor and felony cases, as in § 23-563. *Christian v. United States* (D.C. 1978, 394 A.2d 1).
Authority to issue writs ad testificandum extraterritorially is a necessary aid to and coextensive with the court’s jurisdiction to issue nationwide

subpoenas. *Christian v. United States* (D.C. 1978, 394 A.2d 1).
And writ to produce prisoner for grand jury lineup. — The Superior Court, upon satisfying itself that a writ is in “necessary” aid of its jurisdiction within the meaning of 28 U.S.C. § 1651, may issue a writ of habeas corpus ad testificandum where it is necessary that a prisoner be produced pursuant to a grand jury subpoena commanding him to appear in a lineup. *Christian v. United States* (D.C. 1978, 394 A.2d 1).
Subpoena power of grand jury. — A grand jury may subpoena a suspect and direct him to stand in a lineup. *Christian v. United States* (D.C. 1978, 394 A.2d 1).
Superior Court grand jury had the power to direct subpoenas to persons beyond the territorial borders of the District. *Christian v. United States* (D.C. 1978, 394 A.2d 1).

§ 11-944. Contempt power.

NOTES TO DECISIONS

Evidence sufficient to establish contemptuous conduct. — *In re Gregory* (D.C. 1978, 387 A.2d 720).

§ 11-946. Rules of court.

NOTES TO DECISIONS

Cited in *Rieser v. District of Columbia* (1978, 580 F.2d 647, 188 U.S. App. D.C. 384).

CHAPTER 11. — FAMILY DIVISION OF THE SUPERIOR COURT

§ 11-1101. Exclusive jurisdiction.

NOTES TO DECISIONS

Section contemplates jurisdiction over acts outside District. — This section not only lacks language suggesting a geographical limitation on jurisdiction, as found in § 11-923 (b) (1) which limits the Criminal Division’s jurisdiction, but on the contrary includes

language contemplating the coverage of some acts outside the District of Columbia. *In re A.S.W.* (D.C. 1978, 391 A.2d 1385).
Jurisdiction proper. — Residents of the District of Columbia juvenile detention facility located in Maryland

who were charged with assaulting counselors there were subject to the jurisdiction of the Family Division and did not have a constitutional right to a proceeding in Maryland. *In re A.S.W.* (D.C. 1978, 391 A.2d 1385).

Jurisdictional limitations of § 16-2342 apply. — Section 16-2342, which imposes jurisdictional time limitations, is applicable by its terms to parentage and support proceedings brought under this section. *Felder v. Allsopp* (D.C. 1978, 391 A.2d 243).

Right to visitation is distinct from the duty to support,

which is the underlying purpose for parentage proceedings and which arises automatically upon the establishment of parentage by sufficient proof. *Felder v. Allsopp* App. 1978, 391 A.2d 243).

Jurisdiction over visitation arises from general equitable powers. — Jurisdiction over an action for visitation rights stems from the general equitable powers of the Superior Court rather than from this section relating to the jurisdiction of the Family Division. *Felder v. Allsopp* (D.C. 1978, 391 A.2d 243).

CHAPTER 19. — JURIES AND JURORS

§ 11-1903. Grand jury; additional grand jury.

NOTES TO DECISIONS

Section constitutional. — Provision of this section that permits grand juries attached to either the United States District Court or the Superior Court to return indictments for violations of both federal or local criminal statutes is constitutional. *Hackney v. United States* (D.C. 1978, 389 A.2d 1336).

“Take cognizance” includes to return indictment. — Argument that this section permits a grand jury only to “take cognizance” of a matter ultimately proper before another court but not to return an indictment with respect to such matters was overly literal and unpersuasive. *Hackney v. United States* (D.C. 1978, 389 A.2d 1336).

Superior Court grand juries have powers comparable to federal grand juries. *Christian v. United States* (D.C. 1978, 394 A.2d 1).

Including power to subpoena for lineup. — A grand jury may subpoena a suspect and direct him to stand in a lineup. *Christian v. United States* (D.C. 1978, 394 A.2d 1).

And to subpoena extraterritorially. — Superior Court grand jury had the power to direct subpoenas to persons beyond the territorial borders of the District. *Christian v. United States* (D.C. 1978, 394 A.2d 1).

CHAPTER 25. — ATTORNEYS

§ 11-2501. Admission to bar; regulations; prior admission.

NOTES TO DECISIONS

Court of Appeals has exclusive jurisdiction over review of admission examinations. — Since admission to the Bar of the District of Columbia is governed by the rules of the Court of Appeals, that court has exclusive jurisdiction to entertain a petition for review of admission examinations, and the Superior Court properly dismissed such a petition for lack of jurisdiction. *Kennedy v. Educational Testing Serv., Inc.* (D.C. 1978, 393 A.2d 523).

Antitrust laws do not apply to Court of Appeals’ promulgation of bar admission rules. *Hickey v. District of Columbia Court of Appeals* (1978, 457 F. Supp. 584).

Federal noninterference into bar admission matters. — Absent compelling circumstances, the federal courts follow a general rule of noninterference into matters of bar admissions. *Hickey v. District of Columbia Court of Appeals* (1978, 457 F. Supp. 584).

CHAPTER 26. — REPRESENTATION OF INDIGENTS IN CRIMINAL CASES

§ 11-2601. Plan for furnishing representation of indigents in criminal cases.

NOTES TO DECISIONS

Implementation plan is mandatory in application; that is, in all criminal cases specified under this section an accused who appears in court without counsel shall be informed that he has the right to be represented by appointed counsel if he is financially unable to obtain counsel, and it is the duty of the court or the Criminal Justice Act office to determine whether a person

appearing without counsel is eligible for representation. *Gregory v. United States* (D.C. 1978, 393 A.2d 132).

Either the court or its authorized representative may make findings of eligibility. *Gregory v. United States* (D.C. 1978, 393 A.2d 132).

Cited in *In re A.S.W.* (D.C. 1978, 391 A.2d 1385); *Harling v. United States* (D.C. 1978, 387 A.2d 1101).

§ 11-2602. Appointment of counsel.**NOTES TO DECISIONS**

Cited in *Gregory v. United States* (D.C. 1978, 393 A.2d 132); *In re A.S.W.* (D.C. 1978, 391 A.2d 1385).

§ 11-2603. Duration and substitution of appointments.**NOTES TO DECISIONS**

Attorney may not be removed arbitrarily. — Once an attorney is serving under a valid appointment by the court and an attorney-client relationship has been established, the court may not arbitrarily remove the attorney over the objections of both the defendant and his counsel, although gross incompetence or physical incapacity of counsel or contumacious conduct that cannot be cured by a citation for contempt may justify the court's removal of an

attorney even over the defendant's objection. *Harling v. United States* (D.C. 1978, 387 A.2d 1101).

Or for mere disagreement over conduct of defense. — Mere disagreement as to the conduct of a defense is not sufficient to permit the removal of any attorney. *Harling v. United States* (D.C. 1978, 387 A.2d 1101).

Cited in *In re A.S.W.* (D.C. 1978, 391 A.2d 1385).

§ 11-2604. Payment for representation.**NOTES TO DECISIONS**

Cited in *In re A.S.W.* (D.C. 1978, 391 A.2d 1385).

§ 11-2605. Services other than counsel.**NOTES TO DECISIONS**

Subsection (a) is identical to 18 U.S.C. § 3006A (e) (1) which provides for defense-related services in the federal district courts. *Gaither v. United States* (D.C. 1978, 391 A.2d 1364).

Reason for ex parte proceeding. — The requirement that eligibility and need for a defense service be determined in an ex parte proceeding affords the defendant an opportunity to present his request to the trial court without prematurely disclosing the merits of his defense to the prosecution. *Gaither v. United States* (D.C. 1978, 391 A.2d 1364).

Psychiatric assistance in preparing insanity defense comes within subsection (a). *Gaither v. United States* (D.C. 1978, 391 A.2d 1364).

Purpose of psychiatric expert under subsection (a) is to assist defense counsel in determining whether there is a basis for a substantial defense of sanity and in preparing and presenting such a defense if after examination it appears justified. *Gaither v. United States* (D.C. 1978, 391 A.2d 1364).

Defendant does not always have the right to a psychiatrist under subsection (a). *Gaither v. United States* (D.C. 1978, 391 A.2d 1364).

A court need not appoint a psychiatrist if there is absolutely no reason to think that a plea of insanity would be successful or if a reasonable attorney would not pursue an insanity defense. *Gaither v. United States* (D.C. 1978, 391 A.2d 1364).

The court may deny a request for a psychiatrist under subsection (a) if the defendant has received sufficient psychiatric assistance from other sources to develop an

adequate defense. *Gaither v. United States* (D.C. 1978, 391 A.2d 1364).

Factors trial court should consider in evaluating request for psychiatrist. — In determining whether psychiatric assistance is necessary, the trial court should consider the defendant's prior psychological history, any reports concerning his mental state, the opinion of those who have had an opportunity to view him, the record and the judge's own evaluation of the defendant's demeanor. *Gaither v. United States* (D.C. 1978, 391 A.2d 1364).

In making the determination of whether the services of a psychiatric expert are "necessary for an adequate defense," the trial court should tend to rely on the judgment of defense counsel who has the primary duty of providing an adequate defense. *Gaither v. United States* (D.C. 1978, 391 A.2d 1364).

Character of expert psychiatric services provided under this section. — This section goes beyond provisions such as § 24-301 (a), which provides for a mental examination pursuant to an order of the court, in that a psychiatric expert appointed under this section is not primarily an aide to the court but can be a partisan witness, and his conclusions and opinions need not be reported to either the court or the prosecution. *Gaither v. United States* (D.C. 1978, 391 A.2d 1364).

Counsel should state facts giving rise to need for services. — Although subsection (a) does not require that an application be accompanied by a supporting memorandum, defense counsel should state in the application or a memorandum the facts giving rise to a defendant's need for a particular defense service, thereby

affording the trial court an opportunity to weed out frivolous requests without the need for a hearing. *Gaither v. United States* (D.C. 1978, 391 A.2d 1364).

\$300 limit absent showing by counsel. — Unless defense counsel can show in his application some

justification for payments in excess of \$300, the trial court should limit compensation to that amount. *Gaither v. United States* (D.C. 1978, 391 A.2d 1364).

Cited in *In re A.S.W.* (D.C. 1978, 391 A.2d 1385).

§ 11-2606. Receipt of other payments.

NOTES TO DECISIONS

Seeking dual compensation not required for violation. — Trial court properly refused to instruct the jury that a defendant-attorney must have sought dual compensation in order to be convicted of violating this section. *Gregory v. United States* (D.C. 1978, 393 A.2d 132).

Instruction on entitlement to compensation proper. — Where attorney prosecuted for violating this section knew that the Criminal Justice Act office had found the defendant eligible for representation, that a document

reflecting that determination was before the court and that he would be compensated for his services if he submitted a voucher when the case was completed, the jury could have found him “entitled” to receive compensation within the meaning of this section, and the court did not err in instructing to that effect. *Gregory v. United States* (D.C. 1978, 393 A.2d 132).

Cited in *In re A.S.W.* (D.C. 1978, 391 A.2d 1385).

§ 11-2607. Preparation of Budget.

NOTES TO DECISIONS

Cited in *In re A.S.W.* (D.C. 1978, 391 A.2d 1385).

§ 11-2608. Authorization of appropriations.

NOTES TO DECISIONS

Cited in *In re A.S.W.* (D.C. 1978, 391 A.2d 1385).



TITLE 12. — RIGHT TO REMEDY

Cross references. For recovery of medical care expenses for police and firemen, see § 4-1001 et seq. For reciprocal recovery of taxes, see § 47-341 et seq.

Chap.	Sec.
1. Abatement and Revivor	12-101
3. Limitation of Actions	12-301

CHAPTER 1. — ABATEMENT AND REVIVOR

Sec.
12-101. Survival of rights of action.

§ 12-101. Survival of rights of action.

On the death of a person in whose favor or against whom a right of action has accrued for any cause prior to his death, the right of action, for all such cases, survives in favor of or against the legal representative of the deceased. (Dec. 23, 1963, 77 Stat. 509, Pub. L. 88-241, § 1, eff. Jan. 1, 1964; Aug. 2, 1978, D.C. Law 2-95, § 2, 25 DCR 1270.)

Effect of Amendment.
1978 — Act Aug. 2, 1978, D.C. Law 2-95, amended section by deleting “action survives” and inserting in lieu thereof “action, for all such cases, survives” and by deleting the second sentence.
Legislative History of Law 2-95. Law 2-95 was introduced in Council and assigned Bill No. 2-52, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on April 18, 1978 and

May 2, 1978, respectively. There being no action by the Mayor, it was assigned Act No. 2-199 and transmitted to both Houses of Congress for its review.
Effective date. Section 4 of Act Aug. 2, 1978, D.C. Law 2-95, 25 DCR 1270, provided that the 1978 amendment to the section shall only apply with respect to all actions, proceedings and matters commenced in any administrative or judicial forum on or after the effective date of D.C. Law 2-95.

NOTES TO DECISIONS

Negligent conduct resulting in death gives rise to two independent rights of action under District of Columbia law, one under the Wrongful Death Act (§ 16-2701 et seq.) and one under the Survival Act (§ 12-101 et seq.), upon each of which damages may be sought. *Semler v. Psychiatric Inst. of Wash., D.C., Inc.* (1978, 575 F.2d 922, 188 U.S. App. D.C. 41).
Purpose of section. — This section is designed to place the deceased’s estate in the position it would have been in had the deceased’s life not been cut short. *Semler v. Psychiatric Inst. of Wash., D.C., Inc.* (1978, 575 F.2d 922, 188 U.S. App. D.C. 41).
Damages awarded. — Before enactment of the 1978 amendment to this section, court held that in an action under this section damages are limited to compensation to the estate itself, for the loss of prospective economic benefit in the form of the decedent’s prospective net lifetime earnings discounted to present worth. *Hughes v. Pender* (D.C. 1978, 391 A.2d 259).
Before 1978 amendment, court held that proper recovery under this section is based on the decedent’s probable net future earnings reduced by the amount he would have used to maintain himself and those entitled to recover under the Wrongful Death Act (§ 16-2701 et seq.). *Semler v. Psychiatric Inst. of Wash., D.C., Inc.* (1978, 575 F.2d 922, 188 U.S. App. D.C. 41).
Task of projecting lost earnings lends itself to clarification by expert testimony because it involves the use of statistical techniques and requires a broad

knowledge of economics. *Hughes v. Pender* (D.C. 1978, 391 A.2d 259).
When appellate court will order new trial on damages. — When a jury finds a particular quantum of damages and the trial court refuses to disturb the jury’s findings on a motion for a new trial, an appellate court will order a new trial only when the award is so inadequate as to indicate prejudice, passion or partiality on the part of the jury or where it must have been based on oversight, mistake or consideration of an improper element. *Hughes v. Pender* (D.C. 1978, 391 A.2d 259).
Choice of law. — The District of Columbia has increasingly applied an “interest analysis” approach to choice of law questions in tort cases in general and wrongful death cases in particular. *Semler v. Psychiatric Inst. of Wash., D.C., Inc.* (1978, 575 F.2d 922, 188 U.S. App. D.C. 41).
Action precluded by res judicata. — A Virginia judgment under the Virginia wrongful death statute was res judicata and precluded further recovery under this section because both suits were based on the same grouping of operative facts, the Virginia wrongful death action provided a single and exclusive remedy and the plaintiff had had a full opportunity to litigate the choice of law issue in the Virginia federal court. *Semler v. Psychiatric Inst. of Wash., D.C., Inc.* (1978, 575 F.2d 922, 188 U.S. App. D.C. 41).
And by estoppel. — Having obtained a favorable Virginia judgment premised on the applicability of the Virginia wrongful death law, a plaintiff was estopped from

subsequently claiming that District law rather than Virginia law governed the rights and liabilities of the parties. *Semler v. Psychiatric Inst. of Wash., D.C., Inc.* (1978, 575 F.2d 922, 188 U.S. App. D.C. 41).

Cited in *Rieser v. District of Columbia* (1978, 580 F.2d 647, 188 U.S. App. D.C. 384).

CHAPTER 3. — LIMITATION OF ACTIONS

Sec.

12-302. Disability of plaintiff.

§ 12-301. Limitation of time for bringing actions.

NOTES TO DECISIONS

In General. — Policies of protecting notice and securing ultimate peace between adversaries without unjustly barring claims form the basis for the general rule that the statute of limitations begins to run only "from the time the right to maintain the action accrues," i.e., from the time that all the elements of a cause of action exist. *S. Freedman & Sons v. Hartford Fire Ins. Co.* (D.C. 1978, 396 A.2d 195).

Statute of limitations applicable in federal securities fraud cases. — When a private action is brought under § 10(b) of the federal Securities Exchange Act of 1934 (15 U.S.C. § 78j(b)) and § 17(a) of the federal Securities Act of 1933 (15 U.S.C. § 77q(a)), the two-year blue sky limitations period of § 2-2413(e) applies rather than subsection (8) of this section. *Wachovia Bank & Trust Co. v. National Student Marketing Corp.* (1978, 461 F. Supp. 999).

Period for interference with expected economic advantages. — Alleged malicious interference with efforts to develop property, by false and malicious statements, constitutes not defamation but interference with expected economic advantages, and thus the three-year limitation period applies rather than the one-year period for defamation. *Carr v. Brown* (D.C. 1978, 395 A.2d 79).

Limitation of actions for fraud. — Actions involving allegations of fraud must be brought within three years from the time the fraud either is discovered or reasonably should have been discovered. *King v. Kitchen Magic, Inc.* (D.C. 1978, 391 A.2d 1184).

Tort action accrues on date of injury. — The statute of limitations begins to run, as to a tort, on the date of the injury. *Shehyn v. District of Columbia* (D.C. 1978, 392 A.2d 1008).

A cause of action for ordinary negligence accrues when the plaintiff suffers injury. *Weisberg v. Williams, Connolly & Califano* (D.C. 1978, 390 A.2d 992).

Same principles govern accrual of legal malpractice action as govern other negligence actions. *Weisberg v. Williams, Connolly & Califano* (D.C. 1978, 390 A.2d 992).

Accrual of action for nondelivery of property sold. — Where the parties to a sales contract intended the physical delivery of the subject property to be on demand, the buyer's cause of action accrued only upon the refusal of the collector of the seller's estate to relinquish possession of the property after the seller's death. *Neves v. Riley* (1978, 447 F. Supp. 306).

For conversion by lessee. — Where possession of property by a lessee could have been rightful during the lease term and remained rightful until expiration of the term, any conversion of the property would not have occurred until the expiration of the lease created an

implied demand for its return, and thus the statute of limitations on the lessor's action for conversion would not commence to run as to the lessee until expiration of the lease. *Shehyn v. District of Columbia* (D.C. 1978, 392 A.2d 1008).

For lessee's breach of contract. — Where lessee had contracted to restore premises it had leased to its original condition prior to the termination or renewal of the lease, the statute of limitations for breach of contract did not commence running until the expiration of the leasehold even though the lessee had vacated the premises prior to that date, where its release of two keys to the lessor and his acceptance thereof did not constitute a modification of the lease and where it was not asserted that no other keys remained in the lessee's possession that the lessor took possession so as to prevent reentry by the lessee. *Shehyn v. District of Columbia* (D.C. 1978, 392 A.2d 1008).

Tolling the statute by fraudulent concealment. — Fraudulent concealment of the existence of a cause of action tolls the running of a conventional statute of limitations for as long as the concealment endures. *Weisberg v. Williams, Connolly & Califano* (D.C. 1978, 390 A.2d 992).

The statute of limitations is tolled where the existence of a cause of action for legal malpractice has been fraudulently concealed by the attorney's affirmative misrepresentations. *Weisberg v. Williams, Connolly & Califano* (D.C. 1978, 390 A.2d 992).

Defense to claim of fraudulent concealment. — A defense to a claim that fraudulent concealment of the existence of a cause of action tolled the statute of limitations is that the plaintiff knew, or by the exercise of due diligence could have known, that he may have had a cause of action. *Weisberg v. Williams, Connolly & Califano* (D.C. 1978, 390 A.2d 992).

Barred cause of action raised as defense. — Although this section barred suit for punitive damages for fraud, it did not bar the defrauded parties from raising the fraud as a defense to a judicial foreclosure or to a suit for payment under the contract. *King v. Kitchen Magic, Inc.* (D.C. 1978, 391 A.2d 1184).

Unreasonable time lapse barred suit for constructive trust. — With respect to implied or constructive trusts, unless there has been a fraudulent concealment of the cause of action an unreasonable lapse of time is a complete bar in equity, as at law, and where a plaintiff waited six years to bring an action seeking imposition of a constructive trust the unreasonable delay defeated his action. *Watwood v. Yambrusic* (D.C. 1978, 389 A.2d 1362).

Cited in *Pitts v. District of Columbia* (D.C. 1978, 391 A.2d 803).

§ 12-302. Disability of plaintiff.

(a) Except as provided by subsection (b) of this section, when a person entitled to maintain an action is, at the time the right of action accrues:

- (1) under 18 years of age; or
- (2) noncompos mentis; or
- (3) imprisoned —

he or his proper representative may bring action within the time limited after the disability is removed.

* * * * *

(As amended Mar. 16, 1978, D.C. Law 2-61, § 2, 24 DCR 6011.)

Effect of Amendment.

1978 — Act March 16, 1978, D.C. Law 2-61, amended section by striking “21” and inserting in lieu thereof “18” in paragraph (1) of subsection (a).

Legislative History of Law 2-61. Law 2-61 was introduced in Council and assigned Bill No. 2-165, which

was referred to the Committee on Public Services and Consumer Affairs. The Bill was adopted on first and second readings on September 13, 1977 and October 11, 1977, respectively. Signed by the Mayor on January 11, 1978, it was assigned Act No. 2-131 and transmitted to both Houses of Congress for its review.

§ 12-309. Actions against District of Columbia for unliquidated damages; time for notice.

NOTES TO DECISIONS

- I. General Consideration.
- II. Adequacy of Notice Given.
- III. Police Reports.

I. GENERAL CONSIDERATION.

Intent of section. — This section was intended to ensure that District officials would be given reasonable notice of an accident so that the facts may be ascertained and, if possible, the claim adjusted. *Shehyn v. District of Columbia* (D.C. 1978, 392 A.2d 1008).

The rationale underlying the notice requirement is to (1) protect the District against unreasonable claims and (2) give reasonable notice to the District so that the facts may be ascertained and, if possible, deserving claims adjusted and meritless claims resisted. *Pitts v. District of Columbia* (D.C. 1978, 391 A.2d 803); *Braxton v. National Capital Hous. Auth.* (D.C. 1978, 396 A.2d 215).

This section was intended to serve the same function as numerous comparable state statutes requiring notice to municipalities of events which might result in traditional tort suits against them. *Lively v. Cullinane* (1976, 451 F. Supp. 999).

Section strictly construed. — Since this section is in derogation of the common law, it must be strictly construed. *Pitts v. District of Columbia* (D.C. 1978, 391 A.2d 803).

While precise exactness is not required in the notice statement, the requirements of the statute are nevertheless to be strictly construed. *Braxton v. National Capital Hous. Auth.* (D.C. 1978, 396 A.2d 215).

Compliance with notice requirement is mandatory. *Pitts v. District of Columbia* (D.C. 1978, 391 A.2d 803).

Section gives District a litigative advantage over an ordinary civil defendant who may learn of claims against him for unliquidated damages at any time within the statute of limitations period. *Pitts v. District of Columbia* (D.C. 1978, 391 A.2d 803).

Notice required where District unaware of injury from known wrongful act. — This section is applicable where the District itself is in breach of a duty but where, although necessarily aware of the breach, the District is not necessarily aware of the injury produced by the breach. *Shehyn v. District of Columbia* (D.C. 1978, 392 A.2d 1008).

And where District answerable under respondeat superior. — The requirements of this section must be met where a claim arises out of tortious conduct of employees of the District to which the District, as the superior, must respond. *Shehyn v. District of Columbia* (D.C. 1978, 392 A.2d 1008).

But not where constitutional violation alleged in federal forum. — This section did not apply to an action in which the plaintiff alleged infringement of constitutional rights and sought redress under federal law and in a federal forum under federal question jurisdiction. *Lively v. Cullinane* (1976, 451 F. Supp. 999).

II. ADEQUACY OF NOTICE GIVEN.

Adequate notice by letter and verbal complaints. — In suit by lessor for breach by the District of a contractual duty under its lease and for conversion of the lessor’s property, the requirements of this section were met where the lessor in conversations with personnel of the Department of General Services complained of damage to the leased premises both before and after expiration of the lease term and the lessor’s attorney sent a letter to the Assistant Director for Buildings Management, with a copy to an assistant corporation counsel, giving notice to the District to vacate the premises and stating that the lessor intended to prosecute his claims under the lease. *Shehyn v. District of Columbia* (D.C. 1978, 392 A.2d 1008).

Membership in plaintiff class of former suit not sufficient notice. — Plaintiffs’ claim that the District was adequately informed of their alleged injuries by a complaint in another lawsuit against District officials, instituted on behalf of a class which included the present plaintiffs, was not so compelling that a federal appellate court would by mandamus order a district judge to allow the plaintiffs’ suit against the District. *In re Knable* (1977, 570 F.2d 957, 187 U.S. App. D.C. 48).

III. POLICE REPORTS.

Police report must give time, place, cause and circumstances. — Although the second sentence of this section does not expressly incorporate the requirements of

the first sentence concerning notice of the approximate time, place, cause and circumstances of an incident, incorporation of those specific requirements is necessary in order for the police report provision to be consistent with the statute's purpose of assuring adequate information for the proper and efficient disposition of claims. *Pitts v. District of Columbia* (D.C. 1978, 391 A.2d 803).

Police reports are substitutes for actual notice given, and where such facts as would give notice are not contained in the report, this section is not satisfied. *Braxton v. National Capital Hous. Auth.* (D.C. 1978, 396 A.2d 215).

But technical legal document not required. — Although a police report, by its nature, may not fully reflect every salient fact concerning the potential liability of the District with the same degree of clarity and specificity as a document drawn by an attorney, a report

provides sufficient notice to satisfy the statutory requirement if it recites facts from which it could be reasonably anticipated that a claim against the District might arise. *Pitts v. District of Columbia* (D.C. 1978, 391 A.2d 803).

Considerations in determining adequacy of notice. — The determination of whether a particular police report or series of reports constitutes statutory notice to the District can only be reached after consideration of the particular facts of the case, the nature of the report itself and the objectives sought to be attained by the notice provision. *Pitts v. District of Columbia* (D.C. 1978, 391 A.2d 803).

Police report supplied adequate notice. *Pitts v. District of Columbia* (D.C. 1978, 391 A.2d 803).

Cited in *Marshall v. District of Columbia* (D.C. 1978, 391 A.2d 1374).

TITLE 13.—PROCEDURE GENERALLY

Chap.	Sec.
3. Process and Parties	13-301
4. Civil Jurisdiction and Service Outside the District of Columbia	13-401

CHAPTER 3.—PROCESS AND PARTIES

Subchapter II.—Service of Process; Legal Representatives

§ 13-334. Service on foreign corporations.

NOTES TO DECISIONS

“Doing business” means any continuing corporate presence in the forum directed at advancing a corporation’s objectives. *Ramamurti v. Rolls-Royce Ltd.* (1978, 454 F. Supp. 407).

Parent doing business through subsidiary. — If a subsidiary is merely an agent through which the parent conducts business in a jurisdiction, then the subsidiary’s business will be viewed as that of the parent and the latter will be said to be doing business in the jurisdiction through the subsidiary. *Ramamurti v. Rolls-Royce Ltd.* (1978, 454 F. Supp. 407).

Effect of doing business on extent of amenability to service. — As long as a foreign corporation is “doing business” in the District, it is amenable to service under this section regardless of any connection between the claim for relief and the District. *Ramamurti v. Rolls-Royce Ltd.* (1978, 454 F. Supp. 407).

Results in narrow construction of “doing business”. — The “doing business” standard must be construed narrowly in cases where the claim for relief bears no relation to the contacts with the District which form the jurisdictional base. *Ramamurti v. Rolls-Royce Ltd.* (1978, 454 F. Supp. 407).

Business activities insufficient. — Business activities consisting of purposefully making a flight timetable

available in the District through the actions of another airline and regularly placing advertisements in the so-called joint timetable were insufficient to bring the defendant within the jurisdiction of the District’s courts on a claim having absolutely no connection with the District. *Ramamurti v. Rolls-Royce Ltd.* (1978, 454 F. Supp. 407).

Commercial relations with federal government may support jurisdiction. — Corporations may be subjected to personal jurisdiction in the District when their contacts with the District involve substantial commercial relations with the federal government acting in its proprietary capacity. *Ramamurti v. Rolls-Royce Ltd.* (1978, 454 F. Supp. 407).

Although some of a foreign corporation’s activities involved contacts with the government in its nonproprietary role, personal jurisdiction over the company was proper where it did a substantial amount of business in the District which directly involved commercial contacts with the government as purchaser of the corporation’s products. *Ramamurti v. Rolls-Royce Ltd.* (1978, 454 F. Supp. 407).

CHAPTER 4.—CIVIL JURISDICTION AND SERVICE OUTSIDE THE DISTRICT OF COLUMBIA

Subchapter I.—General Provisions

§ 13-401. Relation to other provisions of law.

NOTES TO DECISIONS

Cited in *Ramamurti v. Rolls-Royce Ltd.* (1978, 454 F. Supp. 407).

Subchapter II.—Bases of Personal Jurisdiction Over Persons Outside the District of Columbia

§ 13-423. Personal jurisdiction based upon conduct.

NOTES TO DECISIONS

Intent of section. — In enacting this section, Congress intended to provide District of Columbia courts with in personam jurisdiction equivalent in scope to that in effect in the neighboring states of Maryland and Virginia. *Rose v. Silver* (D.C. 1978, 394 A.2d 1368).

Due process requires that a nonresident defendant have certain minimum contacts with the forum so the maintenance of the suit does not offend traditional notions of fair play and substantial justice. *Meyers v. Smith* (1978, 460 F. Supp. 621).

There must be some act by which the nonresident defendant purposely avails himself of the privilege of conducting activities in the forum state, invoking the benefits and protections of its laws. *Meyers v. Smith* (1978, 460 F. Supp. 621).

Subsection (a)(1) has been interpreted broadly, and its reach is limited only by due process considerations. *Meyers v. Smith* (1978, 460 F. Supp. 621); *Rose v. Silver* (D.C. 1978, 394 A.2d 1368).

Defendants transacting business through agent. — Where an attorney was hired by a foreign corporation and its president and sent to the District of Columbia to establish an office, negotiate on behalf of the corporation with the federal Food and Drug Administration and if necessary litigate against the FDA, the corporation and its president were transacting business in the District through an agent and accordingly had established the minimum contacts necessary for personal jurisdiction over them consistent with due process. *Rose v. Silver* (D.C. 1978, 394 A.2d 1368).

Government contacts exemption. — In view of the “transacting any business” standard in this section, the government contacts principle, which exempts one from assertions of personal jurisdiction in the District if the sole contact with the District consists of dealing with a federal

instrumentality, is now based solely upon the First Amendment whenever the asserted contacts are covered by the long-arm statute and are sufficient to withstand a traditional due process attack. *Rose v. Silver* (D.C. 1978, 394 A.2d 1368).

Claims must arise from transaction providing basis for jurisdiction. — This section requires some affirmative act by which a defendant brings itself within the jurisdiction and establishes minimum contacts, and jurisdiction is limited to claims arising from the particular transaction of business which provides the basis for jurisdiction. *Cohane v. Arpeja-California, Inc.* (D.C. 1978, 385 A.2d 153).

But may also address activities outside District. — The limitation in this section that a claim for relief must arise from the transaction of business in the District is meant to prevent the assertion of claims in the forum that do not bear some relationship to the acts in the forum relied upon to confer jurisdiction, but once a claim is related to acts in the District, this section does not require that the scope of the claim be limited to activity within the District. *Cohane v. Arpeja-California, Inc.* (D.C. 1978, 385 A.2d 153).

Although only a portion of a plaintiff’s sales occurred in the District, the court had jurisdiction to entertain his suit for commissions on total sales, including those occurring in other states. *Cohane v. Arpeja-California, Inc.* (D.C. 1978, 385 A.2d 153).

Causing injury to American citizens abroad would be insufficient to satisfy the requirements of this section. *Upton v. Empire of Iran* (1978, 459 F. Supp. 264).

Contacts sufficient. — *Meyers v. Smith* (1978, 460 F. Supp. 621).

Cited in *Briggs v. Goodwin* (1977, 569 F.2d 1, 186 U.S. App. D.C. 170).

§ 13-425. Inconvenient forum.

NOTES TO DECISIONS

Plaintiff’s choice of forum should rarely be disturbed unless the balance is strongly in favor of the defendant. *Cohane v. Arpeja-California, Inc.* (D.C. 1978, 385 A.2d 153).

Especially if plaintiff is District resident. — Only under convincing circumstances should a trial court dismiss on grounds of forum non conveniens a suit brought by a resident of the District. *Washington v. May Dep’t Stores* (D.C. 1978, 388 A.2d 484).

But plaintiff’s status not always determinative. — A plaintiff’s status as a resident of the District of Columbia is an important factor in determining the propriety of the forum but would not necessarily preclude dismissal of his suit on forum non conveniens grounds. *Washington v. May Dep’t Stores* (D.C. 1978, 388 A.2d 484).

District of Columbia forum upheld. — Suit was of local interest where it arose from an incident in Maryland but the plaintiff was a resident of the District of Columbia and the defendant, though a foreign corporation, had long operated its stores in the District, and the public interest was served best by conducting the suit in the District since

even though Maryland law would govern the tortious conduct which allegedly occurred there, the legal issues involved were not complex, the District courts were sufficiently acquainted with Maryland tort law, the defendant’s witnesses, though Maryland residents, were all employees of its stores and there was no evidence that the plaintiff had brought suit in the District for purposes of harassment. *Washington v. May Dep’t Stores* (D.C. 1978, 388 A.2d 484).

Questions of forum non conveniens are committed to sound discretion of trial court and will be reversed on appeal only upon a clear showing of an abuse of discretion. *Cohane v. Arpeja-California, Inc.* (D.C. 1978, 385 A.2d 153).

Case should not have been dismissed in midtrial on grounds of forum non conveniens where neither public nor private interests were thereby served. *Cohane v. Arpeja-California, Inc.* (D.C. 1978, 385 A.2d 153).

Cited in *Ramamurti v. Rolls-Royce Ltd.* (1978, 454 F. Supp. 407).

TITLE 14.—PROOF

Chap.	Sec.
1. Evidence Generally; Depositions	14-101
3. Competency of Witnesses	14-301

CHAPTER 1.—EVIDENCE GENERALLY; DEPOSITIONS

§ 14-102. Impeachment of own witness; surprise.

NOTES TO DECISIONS

Cited in *Johnson v. United States* (D.C. 1978, 387 A.2d 1084).

CHAPTER 3.—COMPETENCY OF WITNESSES

§ 14-302. Testimony against deceased or incapable person.

NOTES TO DECISIONS

Cited in *Neves v. Riley* (1978, 447 F. Supp. 306).

§ 14-305. Competency of witnesses; impeachment by evidence of conviction of crime.

NOTES TO DECISIONS

In General. — A prior conviction may not be introduced by the prosecution to prove that a defendant is guilty of the crime with which he is charged, but once the defendant testifies his credibility may be impeached by reference to his prior convictions. *Fields v. United States* (D.C. 1978, 396 A.2d 522).

Convictions timely for purposes of impeachment. — Where defendant was convicted of robbery in 1952, receiving a sentence of three to fifteen years, and of robbery in 1963, receiving a sentence of five to fifteen years, both convictions were admissible for impeachment purposes in defendant's 1976 trial for armed robbery. *Glass v. United States* (D.C. 1978, 395 A.2d 796).

Due process requires production of government witnesses' impeachable convictions. — Due process as elaborated in *Brady v. Maryland* (1963, 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215) and subsequent case law requires at-trial production of the impeachable convictions of government witnesses, at least to the extent of the government's knowledge about them, and failure to produce these convictions may necessitate a new trial if the suppressed evidence might have affected the outcome. *Lewis v. United States* (D.C. 1978, 393 A.2d 109).

Even suppressed juvenile records. — Due process requires disclosure of a requested but suppressed juvenile record when the court concludes that its use for impeachment under this section might have affected the

outcome of the trial. *Lewis v. United States* (D.C. 1978, 393 A.2d 109).

Limited admissibility of facts of prior crimes. — While the fact of a prior conviction is admissible for impeachment purposes, the facts of the crime are admissible only to the extent that they are independently relevant to the issues at trial, and they are not admissible to prove a general criminal disposition. *Ward v. United States* (D.C. 1978, 386 A.2d 1180).

Limits on manner of impeachment. — To minimize the risk of jury misuse of other crimes evidence, the prosecutor must not impeach the defendant with prior convictions in a manner which suggests to the jury that because of his prior criminal acts, the defendant is guilty of the crimes charged. *Fields v. United States* (D.C. 1978, 396 A.2d 522).

In prosecution for armed kidnapping, armed robbery, assault with a dangerous weapon and carrying a pistol without a license questions concerning defendant's prior conviction for unregistered possession of a firearm, asked by the prosecutor immediately after defendant had denied possessing a gun on the occasion of the offense charged, likely gave the jury the impression that evidence of the prior conviction was being offered to rebut that denial, and such questions constituted plain error. *Fields v. United States* (D.C. 1978, 396 A.2d 522).

§ 14-306. Husband and wife.**NOTES TO DECISIONS**

Subsection (a) inapplicable in Federal courts. — In U.S. Court of Appeals tax case in which the evidentiary rules of the District of Columbia District Court applied, subsection (a) of this section was held not to establish a

rule for the District of Columbia federal courts since Congress had not clearly so provided and other federal courts did not recognize so broad a privilege. *Ryan v. Commissioner* (1977, 568 F.2d 531).

§ 14-307. Physicians.

Section referred to in section. 32-362.

NOTES TO DECISIONS

Authorization of disclosure on insurance application waived privilege. — Where an application for insurance contained an authorization to the applicant's physicians to disclose any information requested by the insurance company, it was not necessary that the authorization specifically refer to waiver of the physician-patient privilege to constitute a valid waiver of the privilege, for the signing of the authorization necessarily negated the expectation of protected confidentiality which the privilege is intended to assure. *Jones v. Prudential Ins. Co. of America* (D.C. 1978, 388 A.2d 476).

Only testimony in court violates privilege. — Statements made by a physician to a newspaper reporter

about a patient's drug use did not violate the physician-patient privilege because they did not constitute in-court testimony. *Logan v. District of Columbia* (1978, 447 F. Supp. 1328).

Federal court declined to recognize cause of action based solely on physician's unauthorized disclosure of information obtained through the physician-patient relationship. *Logan v. District of Columbia* (1978, 447 F. Supp. 1328).

Cited in *Ryan v. Commissioner* (1977, 568 F.2d 531).

§ 14-309. Clergy.**NOTES TO DECISIONS**

Cited in *Ryan v. Commissioner* (1977, 568 F.2d 531).

TITLE 16.—PARTICULAR ACTIONS, PROCEEDINGS AND MATTERS

Chap.	Sec.
3. Adoption	16-301
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CHAPTER 3.—ADOPTION

§ 16-302. Persons who may adopt.

NOTES TO DECISIONS

Cited in *In re C.E.H.* (D.C. 1978, 391 A.2d 1370).

§ 16-304. Consent.

NOTES TO DECISIONS

Abandonment must be proved by clear and convincing evidence, and an adoption will be granted without parental consent on grounds of abandonment only when the parent's conduct manifests an intention to be rid of all parental obligations and to forego all parental rights, because adoption without parental consent results in a drastic and permanent severing of one of the strongest and most basic of human relationships. *In re C.E.H.* (D.C. 1978, 391 A.2d 1370).

"Abandonmet" does not require leaving child on a doorstep nor ceasing to feel concern for the child. *In re C.E.H.* (D.C. 1978, 391 A.2d 1370).

Court must consider totality of circumstances in determining whether there has been an abandonment,

including the degree of parental love, care and attention. *In re C.E.H.* (D.C. 1978, 391 A.2d 1370).

Mere failure to support not decisive. — Parental failure to support a child is a factor to be considered in deciding whether there has been an abandonment, but where the parent is financially unable to render support the failure to do so is not voluntary and cannot constitute abandonment. *In re C.E.H.* (D.C. 1978, 391 A.2d 1370).

Evidence sufficient to support finding of abandonment. — *In re C.E.H.* (D.C. 1978, 391 A.2d 1370).

Evidence sufficient that withholding of consent contrary to best interests of child. — *In re Douglas* (D.C. 1978, 390 A.2d 1).

§ 16-309. Adoption proceedings.

NOTES TO DECISIONS

Best interests of child are court's primary concern in an adoption proceeding. *In re Douglas* (D.C. 1978, 390 A.2d 1).

Appointment of counsel at government expense to represent interests of adoptee was not necessary where all of the interests of the adoptee were presented by the

witnesses who favored and those who opposed the adoption and the trial court conducted a meaningful interview with the adoptee in chambers. *In re Douglas* (D.C. 1978, 390 A.2d 1).

Evidence sufficient for entry of adoption decree. — *In re Douglas* (D.C. 1978, 390 A.2d 1).

§ 16-311. Sealing and inspection of records and papers.

NOTES TO DECISIONS

Adult, married adoptee seeking her natural parents was entitled to evidentiary hearing to determine if her adoption records should be open to inspection. *In re C.A.B.* (D.C. 1978, 384 A.2d 679).

CHAPTER 5.—ATTACHMENT AND GARNISHMENT

Subchapter I.—Attachment and Garnishment Generally

§ 16-501. Attachment before judgment; affidavit and bond.

NOTES TO DECISIONS

Strict compliance with statutory procedures is required because a writ of attachment before judgment is a harsh and drastic remedy. *Jack Dev., Inc. v. Howard Eales, Inc.* (D.C. 1978, 388 A.2d 466).

§ 16-502. Service of notice; publication.

NOTES TO DECISIONS

Section requires notice of perfected levy. — Where a writ of attachment before judgment was delivered to the marshal in April and a copy mailed to the defendant at the same time, but the levy was not perfected until the following February, mailing the copy to the defendant in June was insufficient to comply with this section and § 16-508 which require notice of a perfected levy rather than mere notice of the issuance of the writ. *Jack Dev., Inc. v. Howard Eales, Inc.* (D.C. 1978, 388 A.2d 466).

Effect of delivery of writ to marshal and posting of property. — Where writ of attachment before judgment

was issued and marshal posted defendant's property in June but failed to sign and file the endorsement to the writ until the following February, delivery of the writ to the marshal did create an inchoate lien on the defendant's property, but mere posting of the property did not comply with the notice procedures mandated by this section and § 16-508 so that the defendant had no effective notice of the writ until it had been filed and published. *Jack Dev., Inc. v. Howard Eales, Inc.* (D.C. 1978, 388 A.2d 466).

§ 16-507. Property subject to attachment; liens; priorities.

NOTES TO DECISIONS

Lien inchoate where defendant without effective notice of writ. — Where writ of attachment before judgment was issued and marshal posted defendant's property in June but failed to sign and file the endorsement to the writ until the following February, delivery of the writ to the marshal did create an inchoate

lien on the defendant's property, but mere posting of the property did not comply with the notice procedures mandated by §§ 16-502 and 16-508 so that the defendant had no effective notice of the writ until it had been filed and published. *Jack Dev., Inc. v. Howard Eales, Inc.* (D.C. 1978, 388 A.2d 466).

§ 16-508. Attachment of real property.

NOTES TO DECISIONS

Section requires notice of perfected levy. — Where a writ of attachment before judgment was delivered to the marshal in April and a copy mailed to the defendant at the same time, but the levy was not perfected until the following February, mailing the copy to the defendant in June was insufficient to comply with § 16-502 and this section which require notice of a perfected levy rather than mere notice of the issuance of the writ. *Jack Dev., Inc. v. Howard Eales, Inc.* D.C. 1978, 388 A.2d 466).

Lien inchoate where defendant without effective notice of writ. — Where writ of attachment before judgment issued and marshal posted defendant's property in June but failed to sign and file the endorsement to the writ until the following February, delivery of the writ to the marshal did create an inchoate lien on the defendant's property, but mere posting of the property did not comply with the notice procedures mandated by § 16-502 and this section so that the defendant had no effective notice of the

writ until it had been filed and published. *Jack Dev., Inc. v. Howard Eales, Inc.* (D.C. 1978, 388 A.2d 466).

Bona fide purchaser took free of attachment where no effective notice. — Where a bona fide purchaser took property by valid transfer without notice of a writ of attachment against the property, and the transfer

occurred before the transferor himself had been given notice of a sufficiently levied writ of attachment, the purchaser took the property free of the writ which had been sought against the transferor, and the writ should have been quashed. *Jack Dev., Inc. v. Howard Eales, Inc.* (D.C. 1978, 388 A.2d 466).

Subchapter II.—Attachment and Garnishment After Judgment in Aid of Execution

§ 16-546. Attachments of credits.

NOTES TO DECISIONS

Certain contingent contract rights not subject to garnishment. — Contract rights which are to become due only upon the passage of time or upon the happening of a condition are not subject to garnishment. *Shpritz v. District of Columbia* (D.C. 1978, 393 A.2d 68).

Nor are debts of uncertain amounts. — If the amount of a debt sought to be garnished becomes fixed only upon

acceptance of performance satisfactory to the obligee or upon the exercise of judgment, discretion or opinion as distinguished from mere calculation or computation, then the amount of the debt is not sufficiently certain to permit garnishment. *Shpritz v. District of Columbia* (D.C. 1978, 393 A.2d 68).

§ 16-556. Judgment against garnishee.

NOTES TO DECISIONS

Certain contingent contract rights not subject to garnishment. — Contract rights which are to become due only upon the passage of time or upon the happening of a condition are not subject to garnishment. *Shpritz v. District of Columbia* (D.C. 1978, 393 A.2d 68).

Nor are debts of uncertain amounts. — If the amount of a debt sought to be garnished becomes fixed only upon

acceptance of performance satisfactory to the obligee or upon the exercise of judgment, discretion or opinion as distinguished from mere calculation or computation, then the amount of the debt is not sufficiently certain to permit garnishment. *Shpritz v. District of Columbia* (D.C. 1978, 393 A.2d 68).

CHAPTER 7.—CRIMINAL PROCEEDINGS IN THE SUPERIOR COURT

§ 16-704. Bail; collateral security.

NOTES TO DECISIONS

Alternatives for release must promptly be made available. — Unless the alternatives of release on citation, bond or forfeitable collateral are available promptly to

arrestees detained for processing, they are detained in violation of their Fourth Amendment rights. *Lively v. Cullinane* (1978, 451 F. Supp. 1000).

§ 16-705. Jury trial; trial by court.

NOTES TO DECISIONS

Effective waiver of right to jury trial. — An effective waiver of the Sixth Amendment right to trial by jury must include an oral inquiry of the defendant himself in open court, his reply indicating that he understands the nature of his right and that he chooses to waive it and a written waiver signed by the defendant. *Hawkins v. United States* (D.C. 1978, 385 A.2d 744).

Waiver ineffective. — A written waiver signed by the defendant coupled with an oral waiver by defense counsel is not a sufficient waiver of the Sixth Amendment right

to jury trial. *Hawkins v. United States* D.C. 1978, 385 A.2d 744).

When oral inquiry required for waiver. — Oral inquiry of the defendant to ascertain whether he knowingly and voluntarily waives his Sixth Amendment right to trial by jury is mandated in all cases, particularly where the trial court is faced with questions of competence and mental responsibility. *Hawkins v. United States* (D.C. 1978, 385 A.2d 744).

§ 16-710. Suspension of imposition or execution of sentence.

NOTES TO DECISIONS

Imposition of sentence must precede grant of probation. — This section permits the trial court to grant probation only after it has imposed a sentence and suspended its execution. *Schwasta v. United States* (D.C. 1978, 392 A.2d 1071).

Psychiatric examination as condition of probation. — Given the broad discretion concerning imposition of

probation conferred upon the sentencing court and the contents of the presentence report in the case, it was not unlawful for the trial court to require the defendant to submit to a psychiatric examination as a condition of probation. *Moore v. United States* (D.C. 1978, 387 A.2d 714).

CHAPTER 9.—DIVORCE, ANNULMENT, SEPARATION, SUPPORT, ETC.

§ 16-908. Relationship not dependent on marriage.

NOTES TO DECISIONS

Cited in *Bazemore v. Davis* (D.C. 1978, 394 A.2d 1377).

§ 16-910. Dissolution of property rights; jurisdiction of court.

NOTES TO DECISIONS

Creation of tenancy by entirety as conditional gift subject to divestiture. — In the District of Columbia the creation of a tenancy by the entirety in property acquired through the sole contribution of one spouse is a gift conditioned upon fulfillment of the marital vows and continuance of the married state, so that desertion by a spouse and subsequent divorce upon those grounds may result in a divestiture of the conditional gift in favor of the innocent spouse purchaser. *Williams v. Williams* (D.C. 1978, 390 A.2d 4).

Award of joint estate to husband within judge's discretion. — Where neither husband nor wife had made a significant financial contribution to purchase or improve their house and property and only the husband was

obligated to repay the loans which had made possible the purchase and improvements, the mere listing of the parties as joint tenants was not dispositive on the issue of legal entitlement following a divorce, and it was within the trial judge's discretion to award the home entirely to the husband. *Benvenuto v. Benvenuto* (D.C. 1978, 389 A.2d 795).

District of Columbia court applied law of another jurisdiction rather than this section where the only relationship of the District to a claim regarding the ownership of property outside the District was that the District provided a forum with jurisdiction over the defendant. *Williams v. Williams* (D.C. 1978, 390 A.2d 4).

§ 16-911. Alimony pendente lite; suit money; enforcement; custody of children.

NOTES TO DECISIONS

Court in child custody case acts as parens patriae. *Bazemore v. Davis* (D.C. 1978, 394 A.2d 1377).

Child's best interest sole criterion in parent's custody dispute. — In a dispute between the biological parents over custody, the sole consideration is the best interest of the child. *Bazemore v. Davis* (D.C. 1978, 394 A.2d 1377)(overruling any prior inconsistent decisions).

The best interest of the child is the standard to be applied in custody disputes between the natural father and mother of an illegitimate child. *Bazemore v. Davis* (D.C. 1978, 394 A.2d 1377).

Court to decide custody without applying presumptions. — In a dispute between a natural mother and father over custody of their child, the trial court shall decide the delicate question of what is the child's best interest solely by reference to the facts of the particular

case and without resort to the crutch of a presumption in favor of either party. *Bazemore v. Davis* (D.C. 1978, 394 A.2d 1377)(overruling any prior inconsistent decisions).

The trial court erred in relying on the proposition that a fit mother can never be deprived of custody and in explicitly refusing to reach the issue of the best interest of the child. *Bazemore v. Davis* (D.C. 1978, 394 A.2d 1377).

Custody factors properly evaluated — Neither the court's oral ruling nor its written findings of fact and conclusions of law indicated that it had improperly accorded presumptive significance to the factors of motherhood and physical possession of a child in determining the question of future custody. *Moore v. Moore* (D.C. 1978, 391 A.2d 762). But see *Bazemore v. Davis* (D.C. 1978, 394 A.2d 1377).

§ 16-914. Retention of jurisdiction as to alimony and custody of children.

NOTES TO DECISIONS

Court in child custody case acts as parens patriae. *Bazemore v. Davis* (D.C. 1978, 394 A.2d 1377).

Child’s best interest sole criterion in parents’ custody dispute. — In a dispute between the biological parents over custody, the sole consideration is the best interest of the child. *Bazemore v. Davis* (D.C. 1978, 394 A.2d 1377)(overruling any prior inconsistent decisions).

The best interest of the child is the standard to be applied in custody disputes between the natural father and mother of an illegitimate child.*Bazemore v. Davis* (D.C. 1978, 394 A.2d 1377).

Court to decide custody without applying presumption. — In a dispute between a natural mother and father over custody of their child, the trial court shall decide the delicate question of what is the child’s best interests solely by reference to the facts of the particular

case and without resort to the crutch of a presumption in favor of either party. *Bazemore v. Davis* (D.C. 1978, 394 A.2d 1377)(overruling any prior inconsistent decisions).

The trial court erred in relying on the proposition that a fit mother can never be deprived of custody and in explicitly refusing to reach the issue of the best interest of the child. *Bazemore v. Davis* (D.C. 1978, 394 A.2d 1377).

Custody factors properly evaluated — Neither the court’s oral ruling nor its written findings of fact and conclusions of law indicated that it had improperly accorded presumptive significance to the factors of motherhood and physical possession of a child in determining the question of future custody. *Moore v. Moore* (D.C. 1978, 391 A.2d 762). But see *Bazemore v. Davis* (D.C. 1978, 394 A.2d 1377).

§ 16-915. Change of name on divorce.

NOTES TO DECISIONS

Purpose and effect of section. — This section recognizes the common-law right of a married woman to change her name back to her maiden or previously used name and provides a mechanism by which the woman may exercise her right at the time of divorce and record the name change without filing a separate action under § 16-2501 et seq. *Brown v. Brown* (D.C. 1977, 384 A.2d 632).

Trial court without discretion. — This section does not leave the decision of whether the divorce decree should authorize restoration of a prior name to the discretion of the trial court. *Brown v. Brown* (D.C. 1977, 384 A.2d 632).

Cited in *Brown v. Brown* (D.C. 1978, 382 A.2d 1038).

§ 16-916. Maintenance of spouse and minor children; maintenance of former spouse; maintenance of minor children; enforcement.

NOTES TO DECISIONS

Father’s duty to support his needy children is commensurate with his ability to do so. *Wright v. Wright* (D.C. 1978, 386 A.2d 1191).

Child support order may not be used to penalize errant father through the imposition of harsh financial terms. *Wright v. Wright* (D.C. 1978, 386 A.2d 1191).

Modification of original support order unjustified. — Where the trial court did not find a change in either the

needs of the children or the ability of the parents to provide for those needs which would justify an increase in the father’s obligation of support, modification of the court’s original order was not justified. *Wright v. Wright* (D.C. 1978, 386 A.2d 1191).

CHAPTER 11.—EJECTMENT AND OTHER REAL PROPERTY ACTIONS

Subchapter I.—Ejectment

§ 16-1101. Parties defendant; joint tenants and tenants in common.

NOTES TO DECISIONS

Cited in *Sullivan v. Malarkey* (D.C. 1978, 392 A.2d 1057).

§ 16-1109. Recovery of mesne profits and damages; separate count.

NOTES TO DECISIONS

Cited in *Sullivan v. Malarkey* (D.C. 1978, 392 A.2d 1057).

§ 16-1111. Separate action for rent or damages.

NOTES TO DECISIONS

Jurisdiction to try possession despite pending suit for accounting. — There was no merit to a claim that the Landlord and Tenant Division was without jurisdiction to issue an order for possession because a claim for accounting was still pending in the Civil Division, where

the only issue before the Landlord and Tenant Division was possession, no accounting was requested and a claim for a money judgment was waived. *Watwood v. Yambrusic* (D.C. 1978, 389 A.2d 1362).

§ 16-1124. Ejectment for non-payment of rent; time limitation on relief from judgment; set-off; dismissal upon payment.

NOTES TO DECISIONS

Landlord's common-law right of self-help has been abrogated by exclusive statutory procedures for dispossessing a tenant, and violation of a tenant's right not

to have his possession interfered with except by lawful process gives rise to a cause of action in tort. *Mendes v. Johnson* (D.C. 1978, 389 A.2d 781).

CHAPTER 13.—EMINENT DOMAIN

Subchapter II.—Real Property for District of Columbia

§ 16-1316. Time for surrender of possession under declaration of taking; adjustment of charges.

NOTES TO DECISIONS

Government priority over proceeds. — Where private and public claims compete for the proceeds from a condemnation or tax sale, payment to the government takes priority over satisfaction of private interests. *District of Columbia Redevelopment Land Agency v. Eleven Parcels of Land in Squares* (1978, 589 F.2d 628).

Confiscating agency subrogated to government's priority. — Redevelopment Land Agency, having satisfied

a demolition assessment against land acquired by it, was subrogated to the government's general priority as to condemnation proceeds and thus had priority over private mortgagee for sum required to reimburse the RLA for paying both the assessment and the interest which had accrued thereon. *District of Columbia Redevelopment Land Agency v. Eleven Parcels of Land in Squares* (1978, 589 F.2d 628).

CHAPTER 15.—FORCIBLE ENTRY AND DETAINER

§ 16-1501. Definition; summons.

NOTES TO DECISIONS

Landlord's common-law right of self-help has been abrogated by exclusive statutory procedures for dispossessing a tenant, and violation of a tenant's right not to have his possession interfered with except by lawful process gives rise to a cause of action in tort. *Mendes v. Johnson* (D.C. 1978, 389 A.2d 781), overruling *Snitman v. Goodman* (D.C. 1955, 118 A.2d 394).

Court declined to shield mortgagor holding over after foreclosure from an action under the forcible entry and detainer statute. *Simpson v. Jack Spicer Real Estate, Inc.* (D.C. 1978, 396 A.2d 212).

Cited in *Edwards v. Woods* (D.C. 1978, 385 A.2d 780).

CHAPTER 19.—HABEAS CORPUS

§ 16-1901. Petition; issuance of writ.

NOTES TO DECISIONS

Physician acting under magistrate's order was federal officer. — Physician acting pursuant to a U.S. magistrate's order under § 21-902 served as a federal officer within the meaning of subsection (b). *Bension v. Meredith* (1978, 455 F. Supp. 662).

Writ subject to jurisdictional limitations. — The writ authorized by this section has traditionally been subject to jurisdictional limitations. *Christian v. United States* (D.C. 1978, 394 A.2d 1).

This section pertains only to the "Great Writ" of habeas corpus ad subjiciendum (inquiry into the cause of restraint) and not to writs procedural in nature and used for purposes other than to test the legality of confinement. *Christian v. United States* (D.C. 1978, 394 A.2d 1).

And does not authorize writs of habeas corpus ad prosequendum. — The authority to issue writs of habeas corpus ad prosequendum, which bring a person who is confined for some other offense before the issuing court for trial, cannot be read into the language of this section without severe strain. *United States v. Cogdell* (1978, 585 F.2d 1130).

Which are issued under the All Writs Act. — Since Congress, in reforming the District of Columbia court system, could not have intended to remove the local courts' power to issue writs of habeas corpus ad prosequendum, that authority still exists under the All Writs Act (28 U.S.C. § 1652). *United States v. Cogdell* (1978, 585 F.2d 1130).

Transfer of inmates to nonpunishment mental health unit not solely within purview of habeas corpus. — Transfer of inmates to a nonpunishment mental health unit of the District of Columbia correctional system does not come solely within the purview of habeas corpus although habeas corpus may afford alternative relief for inmates challenging that condition of their confinement; accordingly, the exhaustion of remedies in Superior Court is not a prerequisite to federal relief in this transfer situation. *Campbell v. McGruder* (1978, 580 F.2d 521, 188 U.S. D.C. 258).

CHAPTER 23.—FAMILY DIVISION PROCEEDINGS

Subchapter I.—Proceedings Regarding Delinquency, Neglect, or Need of Supervision

§ 16-2301. Definitions.

NOTES TO DECISIONS

Subdivision (3) (A) effects transfer to Criminal Division. — Subdivision (3) (A), by deeming an individual not to be a "child" when certain serious offenses are charged, in effect decrees by operation of law a "transfer" of that individual to the Criminal Division within the meaning of § 16-2307 (h), with the resulting termination of Family Division jurisdiction (subject to restoration as

prescribed) over any subsequent delinquent act for which there is a criminal statute equally applicable to adults. *In re C.S.* (D.C. 1977, 384 A.2d 407).

Cited in *In re A.S.W.* (D.C. 1978, 391 A.2d 1385); *Crews v. United States* (D.C. 1978, 389 A.2d 277); *In re H.M.* (D.C. 1978, 386 A.2d 707); *Choco v. United States* (D.C. 1978, 383 A.2d 333).

§ 16-2302. Transfer of criminal matters to Family Division.

NOTES TO DECISIONS

Right to juvenile disposition lost if not achieved before jeopardy attaches. — Because of the language of subsection (b), a defendant's asserted right to disposition in juvenile proceedings is forever lost if not resolved in his favor before jeopardy has attached. *Choco v. United States* (D.C. 1978, 383 A.2d 333).

Decision for adult trial is final order immediately appealable. — A determination that a defendant be tried

as an adult is a final order and immediately appealable. *Choco v. United States* (D.C. 1978, 383 A.2d 333).

Transfer to Family Division does not preclude retransfer. — Transfer of a case to the Family Division under subsection (a) does not preclude retransfer of a defendant's case for criminal prosecution under the provisions of § 16-2307. *Choco v. United States* (D.C. 1978, 383 A.2d 333).

§ 16-2305. Petition; contents; amendment.**NOTES TO DECISIONS**

Cited in *In re Kossow* (D.C. 1978, 393 A.2d 97).

§ 16-2307. Transfer for criminal prosecution.**NOTES TO DECISIONS**

Section 16-2301 (3) (A) effects transfer under this section. — Section 16-2301 (3) (A), by deeming an individual not to be a “child” when certain serious offenses are charged, in effect decrees by operation of law a “transfer” of that individual to the Criminal Division within the meaning of subsection (h) of this section, with the resulting termination of Family Division jurisdiction (subject to restoration as prescribed) over any subsequent

delinquent act for which there is a criminal statute equally applicable to adults. *In re C.S.* (D.C. 1977, 384 A.2d 407).

Transfer under § 16-2302 (a) does not preclude retransfer under this section. — Transfer of a case to the Family Division under § 16-2302 (a) does not preclude retransfer of a defendant’s case for criminal prosecution under the provisions of this section. *Choco v. United States* (D.C. 1978, 383 A.2d 333).

§ 16-2310. Criteria for detaining children.**NOTES TO DECISIONS**

Cited in *In re C.S.* (D.C. 1977, 384 A.2d 407).

§ 16-2312. Detention or shelter care hearing; intermediate disposition.**NOTES TO DECISIONS**

Cited in *In re C.S.* (D.C. 1977, 384 A.2d 407).

§ 16-2320. Disposition of child who is neglected, delinquent, or in need of supervision.**NOTES TO DECISIONS**

Cited in *In re H.M.* (D.C. 1978, 386 A.2d 707).

§ 16-2322. Limitation of time on dispositional orders.**NOTES TO DECISIONS**

Section applies to orders concerning termination of parental visitation rights. — Nothing in §§ 16-2351 — 16-2365 modifies the prior law that in child neglect proceedings dispositional orders concerning termination of parental visitation rights, as such, are subject to the time limitations in this section, because enactment of the procedure in §§ 16-2351 — 16-2365 for permanently terminating all parental rights in order to facilitate adoption does not imply authority of the court to order

permanent termination of fewer than all parental rights, such as the right to visitation. *In re H.M.* (D.C. 1978, 386 A.2d 707).

And to orders ancillary to temporary custody awards under subsections (a) (2) or (c).—Any order ancillary to an award of temporary custody under subsection (a) (2) or (c), such as an order limiting a parent’s visitation rights, is subject to the same time limitations found in those subsections. *In re H.M.* (D.C. 1978, 386 A.2d 707).

§ 16-2323. Review of dispositional orders.**NOTES TO DECISIONS**

Cited in *In re H.M.* (D.C. 1978, 386 A.2d 707).

§ 16-2327. Probation revocation; disposition.

NOTES TO DECISIONS

Cited in *In re C.S.* (D.C. 1977, 384 A.2d 407); *Choco v. United States* (D.C. 1978, 383 A.2d 333).

Subchapter II.—Parentage Proceedings

§ 16-2342. Time of bringing complaint.

NOTES TO DECISIONS

This section imposes jurisdictional time limitations. *Felder v. Allsopp* (D.C. 1978, 391 A.2d 243).
Section is not applicable to proceedings to establish right to visitation, in which parentage must be proved solely in order to allow a proper consideration of the request for visitation rights. *Felder v. Allsopp* (D.C. 1978, 391 A.2d 243).

Duty to support, which is the underlying purpose for parentage proceedings and which arises automatically upon establishment of parentage by sufficient proof, is distinct from the right to visitation. *Felder v. Allsopp* (D.C. 1978, 391 A.2d 243).

Subchapter III.—Proceedings Regarding the Termination of Parental Rights of Certain Neglected Children

§ 16-2351. Purpose of the subchapter; construction of provisions.

NOTES TO DECISIONS

Time limitations of § 16-2322 apply to orders terminating visitation rights. — Nothing in this subchapter modifies the prior law that in child neglect proceedings dispositional orders concerning termination of parental visitation rights, as such, are subject to the time limitations in § 16-2322, because enactment of the

procedure in this subchapter for permanently terminating all parental rights in order to facilitate adoption does not imply authority of the court to order permanent termination of fewer than all parental rights, such as the right to visitation. *In re H.M.* (D.C. 1978, 386 A.2d 707).

CHAPTER 25.—CHANGE OF NAME

§ 16-2501. Application; persons who may file.

NOTES TO DECISIONS

Separate action not required where change of name on divorce. — Section 16-915 recognizes the common-law right of a married woman to change her name back to her maiden or previously used name and provides a mechanism

by which the woman may exercise her right at the time of divorce and record the name change without filing a separate action under this chapter. *Brown v. Brown* (D.C. 1977, 384 A.2d 632).

CHAPTER 27.—NEGLIGENCE CAUSING DEATH

§ 16-2701. Liability; damages; prior recovery as precluding action.

NOTES TO DECISIONS

Negligent conduct resulting in death gives rise to two independent rights of action, one under the Wrongful Death Act (§ 16-2701 et seq.) and one under the Survival

Act (§ 12-101 et seq.), upon each of which damages may be sought. *Semler v. Psychiatric Inst. of Wash., D.C., Inc.* (1978, 575 F.2d 922, 188 U.S. App. D.C. 41).

Purpose of wrongful death action. — This action is designed to provide a remedy whereby close relatives of a deceased, who might naturally have expected maintenance or assistance from the deceased had he lived, may recover compensation from the wrongdoer commensurate with their pecuniary loss. *Semler v. Psychiatric Inst. of Wash., D.C., Inc.* (1978, 575 F.2d 922, 188 U.S. App. D.C. 41).

Judgment under Virginia law estopped claim under District law. — Having obtained a favorable Virginia judgment premised on the applicability of the Virginia wrongful death law, a plaintiff was estopped from subsequently claiming that District law rather than

Virginia law governed the rights and liabilities of the parties. *Semler v. Psychiatric Inst. of Wash., D.C., Inc.* (1978, 575 F.2d 922, 188 U.S. App. D.C. 41).

Interest analysis approach to choice of law questions. — The District of Columbia has increasingly applied an “interest analysis” approach to choice of law questions in tort cases in general and wrongful death cases in particular. *Semler v. Psychiatric Inst. of Wash., D.C., Inc.* (1978, 575 F.2d 922, 188 U.S. App. D.C. 41).

Cited in *Rieser v. District of Columbia* (1978, 580 F.2d 647, 188 U.S. App. D.C. 384); *Hughes v. Pender* (D.C. 1978, 391 A.2d 259).

CHAPTER 29.—PARTITION AND ASSIGNMENT OF DOWER

Subchapter I.—Partition Generally

§ 16-2901. Parties; accounting by tenant in common.

NOTES TO DECISIONS

Tenant in common is entitled to seek partition of real property as a matter of right. *Hinton v. Hinton* (D.C. 1978, 395 A.2d 7).

Quasi in rem proceeding. — An action for partition is a proceeding which is quasi in rem. *Hinton v. Hinton* (D.C. 1978, 395 A.2d 7).

Notice is core question. — The core question in a partition suit is not whether the court has acquired

personal jurisdiction over the defendant (which it does not need) but rather whether the defendant has been given sufficient notice, under all the circumstances, to apprise him of the pendency of the action and afford him an opportunity to object. *Hinton v. Hinton* (D.C. 1978, 395 A.2d 7).

Cited in *Benvenuto v. Benvenuto* (D.C. 1978, 389 A.2d 795).

CHAPTER 33.—QUIETING TITLE OBTAINED BY ADVERSE POSSESSION

§ 16-3301. Complaint; allegations; parties; service; decree.

NOTES TO DECISIONS

Cited in *Sullivan v. Malarkey* (D.C. 1978, 392 A.2d 1057).

TITLE 16.—APPENDIX

§ 3. Proceedings to compel or stay arbitration.

NOTES TO DECISIONS

Strong legal presumption favors arbitrability of labor disputes. *Washington-Baltimore Newspaper Guild, Local 35 v. Washington Post Co.* (1977, 442 F. Supp. 1060).

TITLE 17.—REVIEW

Chap.	Sec.
3. District of Columbia Court of Appeals	17-301

CHAPTER 3.—DISTRICT OF COLUMBIA COURT OF APPEALS

§ 17-301. Applications for allowance of appeals from certain Superior Court judgments; hearing; effect of denial.

NOTES TO DECISIONS

Cited in *Gamble v. Smith* (D.C. 1978, 386 A.2d 692).

§ 17-305. Scope of review.

NOTES TO DECISIONS

Court of Appeals cannot disturb trial court findings supported by the evidence. *Cunningham v. United States* (D.C. 1978, 391 A.2d 1360).

Factual findings cannot be based on speculation. — In nonjury trial, the court’s factual findings of negligence were overturned pursuant to this section because they were based on an “assumption” and findings by the trier of fact on vital points in a case cannot be left thus to mere conjecture or speculation. *Edison v. Scott* (D.C. 1978, 388 A.2d 1239).

Evidence sufficient. — *Sundown, Inc. v. Canal Square Assoc’s* (D.C. 1978, 390 A.2d 421); *Shelton v. United States* (D.C. 1978, 388 A.2d 859).

Trial court findings overturned as plainly wrong. — *In re J.G.J.* (D.C. 1978, 388 A.2d 472).

Cited in *Bussey v. United States* (D.C. 1978, 395 A.2d 11); *Rose v. Silver* (D.C. 1978, 394 A.2d 1368); *Little v. United States* (D.C. 1978, 393 A.2d 94); *In re Douglas* (D.C. 1978, 390 A.2d 1); *Benvenuto v. Benvenuto* (D.C. 1978, 389 A.2d 795); *Metts v. United States* (D.C. 1978, 388 A.2d 47); *Wright v. United States* (D.C. 1978, 387 A.2d 582); *Douglas v. United States* (D.C. 1978, 386 A.2d 289); *Edwards v. Woods* (D.C. 1978, 385 A.2d 780); *United States v. Covington* (D.C. 1978, 385 A.2d 164); *Smith v. Rogers Mem. Hosp.* (D.C. 1978, 382 A.2d 1025); *United States v. Lowery* (D.C. 1977, 382 A.2d 1007).

Part III

Decedents' Estates and Fiduciary Relations

- TITLE 19. DESCENT AND DISTRIBUTION.
- TITLE 20. ADMINISTRATION OF DECEDENTS' ESTATES.
- TITLE 21. FIDUCIARY RELATIONS AND THE MENTALLY ILL.

TITLE 19.—DESCENT AND DISTRIBUTION

Chap.	Sec.
1. Rights of Surviving Spouse and Children	19-101
3. Intestates' Estates	19-301

CHAPTER 1.—RIGHTS OF SURVIVING SPOUSE AND CHILDREN

§ 19-103. Forfeiture of dower by desertion and adultery.

NOTES TO DECISIONS

Cited in *Harvey v. United States* (D.C. 1978, 385 A.2d 36).

CHAPTER 3.—INTESTATES' ESTATES

Sec.
19-316. Share of illegitimate children; their heirs; mother; father.

§ 19-316. Share of illegitimate children; their heirs; mother; father.

Illegitimate children and the heirs of illegitimate children are capable of taking real and personal estate by inheritance from their mother or from their father if parenthood has been established, or from each other, or from heirs of each other, as the case may be, in like manner as if born in lawful wedlock, and the mother and such father, and their respective heirs, are capable of inheriting from such children. (Sept. 14, 1965, 79 Stat. 699, Pub. L. 89-183, § 1, eff. Jan. 1, 1966; Oct. 1, 1976, D.C. Law 1-87, § 22 (a), (c), 23 DCR 2544; June 13, 1978, D.C. Law 2-78, § 2, 24 DCR 9282.)

Effect of Amendment.
1978 — Act June 13, 1978, D.C. Law 2-78, amended section by striking “by judicial process or pursuant to sec. 19-318”, by striking “issue” and inserting in lieu thereof “heirs” and by striking “descendants” and inserting in lieu thereof “heirs”.
Legislative History of Law 2-78. Law 2-78 was introduced in Council and assigned Bill No. 2-232, which was referred to the Committee on the Judiciary. The Bill

was adopted on first and second readings on February 21, 1978 and March 7, 1978, respectively. There being no action by the Mayor, it was assigned Act No. 2-172 and transmitted to both Houses of Congress for its review.
Short title. The first section of the act of June 13, 1978, D.C. Law 2-78, provided: “That this act may be cited as the ‘Paternity Procedures Clarifying Amendment Act of 1978.’ ”

§ 19-320. Felonious homicide as barring inheritance; insurance policies; bona fide purchasers.

NOTES TO DECISIONS

Cited in *Harvey v. United States* (D.C. 1978, 385 A.2d 36).

TITLE 20.—ADMINISTRATION OF DECEDENTS' ESTATES

Chap.	Sec.
15. Suits	20-1501

CHAPTER 15.—SUITS

Sec.
20-1501. Suits by and against executors and administrators.

§ 20-1501. Suits by and against executors and administrators.

Executors and administrators may commence and prosecute any civil action which the testator or intestate might have commenced and prosecuted, and may be sued in any civil action which might have been maintained against the deceased. (Sept. 14, 1965, 79 Stat. 725, Pub. L. 89-183, § 1, eff. Jan. 1, 1966; Aug. 2, 1978, D.C. Law 2-95, § 3, 25 DCR 1270.)

Effect of Amendment.
1978 — Act Aug. 2, 1978, D.C. Law 2-95, amended section by deleting the designation “(a)” at the beginning of the first sentence and by deleting all of subsection (b).
Legislative History of Law 2-95. See note to § 12-101.
Effective date. Section 4 of act Aug. 2, 1978, D.C. Law 2-95, 25 DCR 1270, provided that the 1978 amendment of

this section shall only apply with respect to all actions, proceedings and matters commenced in any administrative or judicial forum on or after the effective date of D.C. Law 2-95.

TITLE 21.—FIDUCIARY RELATIONS AND THE MENTALLY ILL

Chap.	Sec.
5. Hospitalization of the Mentally Ill	21-501
9. Mentally Ill Persons Found in Certain Federal Reservations	21-901
15. Conservators	21-1501

CHAPTER 5.—HOSPITALIZATION OF THE MENTALLY ILL
Subchapter I.—Definitions; Commission on Mental Health

§ 21-501. Definitions.

NOTES TO DECISIONS

Hospital superintendent could not appeal order releasing person. — A hospital superintendent could not appeal a trial court’s order releasing one whom he had sought unsuccessfully to have judicially hospitalized under this chapter because the superintendent was not an “aggrieved party” within the meaning of § 11-721 (b) and because any right of appeal granted to him would be contrary to the design and intent of this chapter, which

emphasizes promptness of determination and the immediate release of persons determined to be either not mentally ill or not dangerously mentally ill. *In re Lomax* (D.C. 1978, 386 A.2d 1185).
Cited in *Bension v. Meredith* (1978, 455 F. Supp. 662); *Jones v. United States* (D.C. 1978, 396 A.2d 183); *In re Kossow* (D.C. 1978, 393 A.2d 97).

§ 21-502. Commission on Mental Health; composition; appointment and terms of members; organization; chairman; salaries.

NOTES TO DECISIONS

Cited in *In re Kossow* (D.C. 1978, 393 A.2d 97).

Subchapter III.—Emergency Hospitalization

§ 21-521. Detention of persons believed to be mentally ill; transportation and application to hospital.

NOTES TO DECISIONS

Cited in *Bension v. Meredith* (1978, 455 F. Supp. 662); *In re Lomax* (D.C. 1978, 386 A.2d 1185).

§ 21-522. Examination and admission to hospital; notice.

NOTES TO DECISIONS

Cited in *In re Lomax* (D.C. 1978, 386 A.2d 1185).

§ 21-523. Court order requirement for hospital detention beyond 48 hours; maximum period for observation.

NOTES TO DECISIONS

Cited in *Bension v. Meredith* (1978, 455 F. Supp. 662);
In re Lomax (D.C. 1978, 386 A.2d 1185).

§ 21-524. Determination and order of court.

NOTES TO DECISIONS

Cited in *Bension v. Meredith* (1978, 455 F. Supp. 662);
In re Lomax (D.C. 1978, 386 A.2d 1185).

§ 21-525. Hearing by court.

NOTES TO DECISIONS

Cited in *In re Lomax* (D.C. 1978, 386 A.2d 1185).

§ 21-528. Detention of person pending judicial proceedings.

NOTES TO DECISIONS

Cited in *In re Lomax* (D.C. 1978, 386 A.2d 1185).

Subchapter IV.—Hospitalization Under Court Order

§ 21-541. Petition to Commission; copy to person affected.

NOTES TO DECISIONS

Nonparticipation of prosecuting authority does not prevent commitment. — There is no statutory or constitutional command forbidding civil commitment of an individual in a judicial proceeding litigated by a private petitioner when the prosecuting authority has elected not to participate. *In re Kossow* (D.C. 1978, 393 A.2d 97).

Cited in *Bension v. Meredith* (1978, 455 F. Supp. 662);
Jones v. United States (D.C. 1978, 396 A.2d 183); *In re Lomax* (D.C. 1978, 386 A.2d 1185).

§ 21-542. Hearing by Commission; presence and rights of person affected; hearing regarding liability.

NOTES TO DECISIONS

Cited in *In re Kossow* (D.C. 1978, 393 A.2d 97); *In re Lomax* (D.C. 1978, 386 A.2d 1185).

§ 21-543. Representation by counsel; compensation; recess.

NOTES TO DECISIONS

Cited in *In re Kossow* (D.C. 1978, 393 A.2d 97).

§ 21-544. **Determinations of Commission; report to court; copy to person affected; right to jury trial.**

NOTES TO DECISIONS

Cited in *In re Kossow* (D.C. 1978, 393 A.2d 97); *In re Lomax* (D.C. 1978, 386 A.2d 1185).

§ 21-545. **Hearing and determination by court or jury; order; witnesses; jurors.**

NOTES TO DECISIONS

Government bears burden at commitment hearings of proving mental illness and likelihood of injury beyond a reasonable doubt. *Jones v. United States* (D.C. 1978, 396 A.2d 183).

Application of section to defendants committed upon insanity verdict. — Defendant lawfully committed upon finding of not guilty by reason of insanity was not constitutionally entitled to release or civil commitment proceedings under this section upon expiration of the maximum period for which he could have been imprisoned, since the length of a hypothetical prison term has no

relationship to the rehabilitative goal and safety concerns of hospital confinement. *Jones v. United States* (D.C. 1978, 396 A.2d 183).

Nonparticipation of prosecuting authority does not prevent commitment. — There is no statutory or constitutional command forbidding civil commitment of an individual in a judicial proceeding litigated by a private petitioner when the prosecuting authority has elected not to participate. *In re Kossow* (D.C. 1978, 393 A.2d 97).

Cited in *In re Lomax* (D.C. 1978, 386 A.2d 1185).

§ 21-546. **Periodic requests for examination of hospitalized patient; procedure for examination and detention or release; petition to court.**

NOTES TO DECISIONS

Cited in *Jones v. United States* (D.C. 1978, 396 A.2d 183).

§ 21-548. **Periodic examinations by hospital authorities; release.**

NOTES TO DECISIONS

Application of section to defendants committed upon insanity verdict. — As a matter of constitutional equal protection, acquittees committed under § 24-301 are

entitled to periodic review similar to that afforded to civilly committed persons under this section. *Jones v. United States* (D.C. 1978, 396 A.2d 183).

Subchapter VI.—Miscellaneous Provisions

§ 21-588. **Forms.**

NOTES TO DECISIONS

Cited in *Bension v. Meredith* (1978, 455 F. Supp. 662).

CHAPTER 9.—MENTALLY ILL PERSONS FOUND IN CERTAIN FEDERAL RESERVATIONS

§ 21-901. **Definition.**

NOTES TO DECISIONS

Cited in *Bension v. Meredith* (1978, 455 F. Supp. 662).

§ 21-902. Commitments by special commissioners of certain district courts.

NOTES TO DECISIONS

This is an interim detention statute of which treatment is obviously not an aim. *Bension v. Meredith* (1978, 455 F. Supp. 662).

Detainee must be mentally ill and likely to injure himself or others. — In order to preserve the constitutionality of the Federal Reservation Act (§§ 21-901—21-909), this section must be construed to require a magistrate authorizing commitment to find probable cause to believe not only that the detainee is mentally ill within the meaning of the Act but also that he is likely to injure himself or others if not detained. *Bension v. Meredith* (1978, 455 F. Supp. 662).

Exhaustion doctrine inapplicable to suit challenging statute. — This federal reservation statute, although

appearing in the District of Columbia Code, lacks any other attribute of a state statute within the meaning of the exhaustion doctrine, so that there was no reason for the federal district court to defer to the local judiciary in an action challenging the constitutionality of proceedings under the statute. *Bension v. Meredith* (1978, 455 F. Supp. 662).

Release of detainee did not moot case challenging constitutionality of commitment where collateral legal consequences might have resulted from his detention and the issue was capable of repetition, yet evading review on account of the short commitment period. *Bension v. Meredith* (1978, 455 F. Supp. 662).

§ 21-903. Apprehension by certain officials of persons believed to be mentally ill; proceedings.

NOTES TO DECISIONS

Cited in *Bension v. Meredith* (1978, 455 F. Supp. 662).

§ 21-906. Examinations; adjudications; laws applicable; expense of care and treatment.

NOTES TO DECISIONS

Meaning of “adjudication”. — The term “adjudication” in subsection (b) refers to a judicial order for indefinite commitment. *Bension v. Meredith* (1978, 455 F. Supp. 662).

CHAPTER 15.—CONSERVATORS

§ 21-1501. Appointment of conservators.

NOTES TO DECISIONS

Cited in *In re Coffey* (D.C. 1978, 390 A.2d 446).

§ 21-1503. Bond; powers and duties.

NOTES TO DECISIONS

Cited in *In re Coffey* (D.C. 1978, 390 A.2d 446).

Part IV

Criminal Law and Procedure

TITLE 22. CRIMINAL OFFENSES.
TITLE 23. CRIMINAL PROCEDURE.

TITLE 22.—CRIMINAL OFFENSES

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CHAPTER 1.—GENERAL PROVISIONS

§ 22-103. Attempts to commit crime.

NOTES TO DECISIONS

Cited in *Lewis v. United States* (D.C. 1978, 389 A.2d 306); *Wynn v. United States* (D.C. 1978, 386 A.2d 695); *Montgomery v. United States* (D.C. 1978, 384 A.2d 655).

§ 22-104a. Punishment of persons convicted of a felony with a prior record of at least two felony convictions — Definitions — Effect of convictions pardoned on the ground of innocence.

NOTES TO DECISIONS

Limited applicability of felony definition. — Application of the felony definition contained in this section is specifically limited to use under this section. Cited in *Glass v. United States* (D.C. 1978, 395 A.2d 796); *Harvey v. United States* (D.C. 1978, 395 A.2d 92). *Scott v. United States* (D.C. 1978, 392 A.2d 4).

§ 22-105. Persons advising, inciting, or conniving at criminal offense to be charged as principals.

NOTES TO DECISIONS

Elements of the offense of aiding and abetting are (1) guilty knowledge on the part of the accused, (2) that an offense was committed by someone and (3) that the defendant assisted or participated in the commission of the offense. *United States v. Staten* (1978, 581 F.2d 878); *Glass v. United States* (D.C. 1978, 395 A.2d 796); *Ellis v. United States* (D.C. 1978, 395 A.2d 404).

This section requires proof that the offense charged was committed by someone other than the person charged with aiding and abetting, that the accused assisted or participated in the commission and that he did so with guilty knowledge. *Allen v. United States* (D.C. 1978, 383 A.2d 363); *Stewart v. United States* (D.C. 1978, 383 A.2d 330).

One who knowingly participates in the commission of a criminal act by assisting the principal is equally liable. *Montgomery v. United States* (D.C. 1978, 384 A.2d 655).

Identity of principal not essential. — There must be a guilty principal before there can be an aider and abettor, but it is not essential that the principal in an operation be identified so long as someone has that status. *United States v. Staten* (1978, 581 F.2d 878).

Significance of presence at scene of crime. — Presence at the scene of a crime, even when coupled with knowledge that a crime is being committed, is generally not enough to constitute aiding and abetting, but an act of relatively slight moment, when coupled with knowledge, may warrant a finding of participation in the crime. *Montgomery v. United States* (D.C. 1978, 384 A.2d 655).

Presence at scene of crime, while insufficient alone, will constitute aiding and abetting if it designedly encourages the perpetrator, facilitates the unlawful deed or stimulates others to render assistance. *Glass v. United States* (D.C. 1978, 395 A.2d 796).

Evidence of defendant's proximity to shoplifter at the time the goods were placed in the bag and the manner in which he was continuously looking around, suggesting that he was serving as lookout, was sufficient to support conviction for aiding and abetting. *Montgomery v. United States* (D.C. 1978, 384 A.2d 655).

Aider and abettor liable for acts in furtherance of common purpose. — An accomplice who aids and abets the commission of a felony is legally responsible as a

principal for all acts of another person which are in furtherance of the common purpose, if the act done either is within the scope of that purpose or is the natural or probable consequence of the act intended. *Christian v. United States* (D.C. 1978, 394 A.2d 1).

Whether or not he intended result accomplished. — An accessory is liable for any criminal act which was the natural and probable consequence of the initial encounter whether he did or did not intend the result accomplished. *Johnson v. United States* (D.C. 1978, 386 A.2d 710).

Aider and abettor need not have had identical intent of principal at the same time and place. *Allen v. United States* (D.C. 1978, 383 A.2d 363); *Stewart v. United States* (D.C. 1978, 383 A.2d 330).

Felony murder liability of accomplice derives from this section. — Section 22-2401 by its terms imposes felony murder liability solely on the person who does the killing, so that other participants in the felony are exposed to first-degree murder liability only by virtue of this section. *Christian v. United States* (D.C. 1978, 394 A.2d 1).

And arises out of common-law vicarious liability. — The felony murder liability of an accomplice must be determined in accordance with common-law concepts of vicarious liability. *Christian v. United States* (D.C. 1978, 394 A.2d 1).

Instructions on liability as principal and accomplice proper. — In a trial for first-degree murder, even though the evidence tended to prove that the defendant was the actual killer it was not inconsistent or misleading for the trial court to instruct on the theory that he was an aider and abettor as well as the actual killer, because the greater participation in the offense includes the lesser, and the legal effect is the same. *Hackney v. United States* (D.C. 1978, 389 A.2d 1336).

Evidence sufficient. — *United States v. Staten* (1978, 581 F.2d 878); *Glass v. United States* (D.C. 1978, 395 A.2d 796); *Ellis v. United States* (D.C. 1978, 395 A.2d 404); *Johnson v. United States* (D.C. 1978, 386 A.2d 710); *Jones v. United States* (D.C. 1978, 386 A.2d 308).

Cited in *Jackson v. United States* (D.C. 1978, 395 A.2d 99); *Waller v. United States* (D.C. 1978, 389 A.2d 801); *Stewart v. United States* (D.C. 1978, 383 A.2d 330).

§ 22-105a. Punishment of persons convicted of conspiracies to commit crimes — Proof — Conspiracies to commit crimes within or outside of the District.

NOTES TO DECISIONS

Evidence sufficient. — *Christian v. United States* (D.C. 1978, 394 A.2d 1); *Jones v. United States* (D.C. 1978, 386 A.2d 308).

Cited in *In re A.S.W.* (D.C. 1978, 391 A.2d 1385).

§ 22-106. Accessories after the fact.

NOTES TO DECISIONS

Government estopped from using evidence from first trial. — Where in the first trial the jury acquitted defendant of use of an automobile without the owner's consent, armed robbery and assault with a dangerous weapon, the government was collaterally estopped from having the evidence supporting those counts admitted against the defendant in a second trial charging him with

making four sawed-off shotguns, first-degree murder while armed, second-degree murder while armed, unlawful possession of five sawed-off shotguns and being an accessory after the fact to first-degree and second-degree murder. *United States v. Day* (1978, 591 F.2d 861).

Cited in *McBride v. United States* (D.C. 1978, 393 A.2d 123).

CHAPTER 4.—ARSON

§ 22-401. Definition and penalty.

NOTES TO DECISIONS

Cited in *Gaither v. United States* (D.C. 1978, 391 A.2d 1364).

§ 22-403. Malicious burning, destruction, or injury of another's movable property.

NOTES TO DECISIONS

Cited in *Ingram v. United States* (D.C. 1978, 392 A.2d 505); *Farrell v. United States* (D.C. 1978, 391 A.2d 755); *Wynn v. United States* (D.C. 1978, 386 A.2d 695).

CHAPTER 5.—ASSAULT — MAYHEM — THREAT OF BODILY HARM

§ 22-501. Assault with intent to kill, rob, rape, or poison.

NOTES TO DECISIONS

Not necessary to prove aider and abettor had intent to kill. — Given the provisions of § 22-105 requiring aiders and abettors to be charged as principals, it was not necessary to prove that a defendant had intent to kill in order to convict him under this section so long as the evidence showed that he was one of three men who had held guns on the victim, who was shot by one of the three. *Allen v. United States* (D.C. 1978, 383 A.2d 363).

Failure to give corroboration instruction harmless error. — Where the circumstances provided adequate independent evidence that accusations of sodomy and assault with intent to commit rape were not a fabrication, the court's failure to give the required corroboration instruction was harmless error. *Williams v. United States* (D.C. 1978, 385 A.2d 760).

Defendant had no legitimate claim to defense of self-defense in a prosecution under this section since he had voluntarily placed himself in a position which he could reasonably expect would result in violence. *Nowlin v. United States* (D.C. 1978, 382 A.2d 9).

Joinder of charges did not prejudice defendant. — Joinder of charges of rape and assault with intent to rape did not prejudice the defendant where because of unusual factual similarities between the two offenses charged evidence of each crime would have been admissible in a separate trial of the other to show identity and motive and, in the case of the charge of assault with intent to rape, to show intent. *Crisafi v. United States* (D.C. 1978, 383 A.2d 1).

Failure to instruct on assault as lesser included offense not error. — Where there was insufficient evidence on the issue of lack of intent to justify giving an instruction on assault as a lesser included offense of assault with intent to rape, the failure to so instruct was not error. *Robinson v. United States* (D.C. 1978, 388 A.2d 1210).

Merger of assault counts. — Conviction of assault with a dangerous weapon was vacated by the trial judge as having merged with a count of assault with intent to commit robbery while armed. *Forbes v. United States* (D.C. 1978, 390 A.2d 453).

Evidence sufficient. — *Christian v. United States* (D.C. 1978, 394 A.2d 1); *Allen v. United States* (D.C. 1978, 383 A.2d 363); *Crisafi v. United States* (D.C. 1978, 383 A.2d 1).

Cited in *Ellis v. United States* (D.C. 1978, 395 A.2d 404); *Harvey v. United States* (D.C. 1978, 395 A.2d 92); *Peoples v. United States* (D.C. 1978, 395 A.2d 41); *Gilbert v. United States* (D.C. 1978, 395 A.2d 1); *McBride v. United States* (D.C. 1978, 393 A.2d 123); *Pettaway v. United States* (D.C. 1978, 390 A.2d 981); *Brown v. United States* (D.C. 1978, 388 A.2d 451); *Ward v. United States* (D.C. 1978, 386 A.2d 1180); *Cureton v. United States* (D.C. 1978, 386 A.2d 278); *Cole v. United States* (D.C. 1978, 384 A.2d 651); *Reed v. United States* (D.C. 1978, 383 A.2d 316); *Jefferson v. United States* (D.C. 1978, 382 A.2d 1030).

§ 22-502. Assault with intent to commit mayhem or with dangerous weapon.

NOTES TO DECISIONS

Best evidence of weapon's dangerous character and of what it was capable of doing was the injury actually inflicted by it. *Freeman v. United States* (D.C. 1978, 391 A.2d 239).

Outweighed prejudicial effect. — Probative value of testimony that a complainant had suffered a miscarriage as a result of the assault, as evidence of the dangerous character of the weapon used in the assault (a board),

outweighed the testimony's probable prejudicial effect, and it therefore was properly admitted. *Freeman v. United States* (D.C. 1978, 391 A.2d 239).

Defendant had no legitimate claim to defense of self-defense in a prosecution under this section since he had voluntarily placed himself in a position which he could reasonably expect would result in violence. *Nowlin v. United States* (D.C. 1978, 382 A.2d 9).

Assault with dangerous weapon lesser included offense of armed robbery. — Robbery and assault with a dangerous weapon are lesser included offenses of armed robbery. *Franey v. United States* (D.C. 1978, 382 A.2d 1019).

Merger of assault counts. — Conviction of assault with a dangerous weapon was vacated by the trial judge as having merged with a count of assault with intent to commit robbery while armed. *Forbes v. United States* (D.C. 1978, 390 A.2d 453).

Instruction on lesser included offenses not necessary. — Where the defendant's evidence in a prosecution for felony murder and armed robbery was so incredible that it provided no rational basis for a lesser charge of assault with a deadly weapon or simple assault, the trial court was not required to instruct the jury on those lesser included offenses. *Day v. United States* (D.C. 1978, 390 A.2d 957).

Impact of conviction on civil assault action. — His conviction for assault with a dangerous weapon having

been affirmed on appeal, the defendant could not relitigate the issue of liability for the assault when sued in a civil action for damages resulting from that assault. *Ross v. Lawson* (D.C. 1978, 395 A.2d 54).

Evidence sufficient. — *Johnson v. United States* (D.C. 1978, 386 A.2d 710).

Cited in *United States v. Day* (1978, 591 F.2d 861); *Fields v. United States* (D.C. 1978, 396 A.2d 522); *Ellis v. United States* (D.C. 1978, 395 A.2d 404); *Jackson v. United States* (D.C. 1978, 395 A.2d 99); *Harvey v. United States* (D.C. 1978, 395 A.2d 92); *Peoples v. United States* (D.C. 1978, 395 A.2d 41); *Lewis v. United States* (D.C. 1978, 393 A.2d 109); *Evans v. United States* (D.C. 1978, 392 A.2d 1015); *Smith v. United States* (D.C. 1978, 392 A.2d 990); *Scott v. United States* (D.C. 1978, 392 A.2d 4); *Adair v. United States* (D.C. 1978, 391 A.2d 288); *Smith v. United States* (D.C. 1978, 389 A.2d 1364); *Crews v. United States* (D.C. 1978, 389 A.2d 277); *Webb v. United States* (D.C. 1978, 388 A.2d 857); *Brown v. United States* (D.C. 1978, 388 A.2d 451); *Wright v. United States* (D.C. 1978, 387 A.2d 582); *Brown v. United States* (D.C. 1978, 383 A.2d 1082); *Crosby v. United States* (D.C. 1978, 383 A.2d 351); *Chambers v. United States* (D.C. 1978, 383 A.2d 343); *Harling v. United States* (D.C. 1978, 382 A.2d 845).

§ 22-504. Assault or threatened assault in a menacing manner.

NOTES TO DECISIONS

Evidence to show self-defense inadmissible absent connection between threats and victim. — Where defendant testified that he had acted in self-defense and that his actions were reasonable based upon threats on his life, a tape recording of one such threat and the testimony of witnesses corroborating the existence of such threats were properly excluded since in the absence of any allegation that the threats had been made by the victim the evidence was on a collateral issue which might have confused the jury. *Moore v. United States* (D.C. 1978, 387 A.2d 714).

Assault not committed in defense of property. — Where defendant asserted a "defense of property" defense to a charge of assaulting a gas company collector who had attempted to remove his gas meter for failure to

pay bill, the trial judge properly instructed the jury that as long as the victim's entry was nonforcible there was no trespass and that as long as he did not depart from the legitimate purpose of his entry, the defendant was not justified in ejecting him. *Jackson v. United States* (D.C. 1978, 385 A.2d 786).

Instruction on lesser included offenses not necessary. — Where the defendant's evidence in a prosecution for felony murder and armed robbery was so incredible that it provided no rational basis for a lesser charge of assault with a deadly weapon or simple assault, the trial court was not required to instruct the jury on those lesser included offenses. *Day v. United States* (D.C. 1978, 390 A.2d 957).

Cited in *United States v. Dixon* (1978, 446 F. Supp. 58); *Lucas v. United States* (1977, 443 F. Supp. 539).

§ 22-505. Assault on member of police force or fire department.

NOTES TO DECISIONS

Section reaches attacks on juvenile personnel occurring outside District. — The language of subsection (a) "whether such institution or facility is located within the District of Columbia or elsewhere" reaches attacks on personnel of juvenile facilities taking place outside, as well as inside, the District. *In re A.S.W.* (D.C. 1978, 391 A.2d 1385).

Defendant could be convicted under this section even though co-conspirator had fired at pursuing police officers, on any of four theories: (1) that the assault was the natural and probable consequence of the attempted robbery in which the defendant participated, (2) that the

assault took place during the defendant's escape from an assault on another officer in which the defendant did actively participate, (3) that the defendant actively aided and abetted the co-conspirator in that escape and was thus equally responsible under § 22-105 for the attendant assault on the second police officer or (4) that the escape attempt was an inherent element of the crime intended. *Jones v. United States* (D.C. 1978, 386 A.2d 308).

Evidence sufficient. — *Jones v. United States* (D.C. 1978, 386 A.2d 308).

Cited in *Scott v. United States* (D.C. 1978, 392 A.2d 4).

§ 22-506. Mayhem or maliciously disfiguring.

NOTES TO DECISIONS

Relationship between mayhem and murder statutes. — The statutory provisions dealing with murder and those dealing with mayhem are intended to protect different societal interests: The mayhem statute seeks to protect the preservation of the human body in its normal functioning and the integrity of the person from permanent injury or disfigurement, whereas the felony murder statute purports to protect human life and permits the jury (when

death results) to infer the presence of malice from the fact that mayhem was committed. *McFadden v. United States* (D.C. 1978, 395 A.2d 14).

Cited in *Harvey v. United States* (D.C. 1978, 395 A.2d 92); *Adair v. United States* (D.C. 1978, 391 A.2d 288); *Pettaway v. United States* (D.C. 1978, 390 A.2d 981); *Cohoon v. United States* (D.C. 1978, 387 A.2d 1098).

§ 22-507. Threats to do bodily harm.

NOTES TO DECISIONS

Cited in *Woodward v. District of Columbia* (D.C. 1978, 387 A.2d 726); *Jackson v. United States* (D.C. 1978, 385

A.2d 786); *Mariam v. United States* (D.C. 1978, 385 A.2d 776).

CHAPTER 7.—BRIBERY — OBSTRUCTING JUSTICE

§ 22-703. Obstructing justice.

NOTES TO DECISIONS

It is not necessary to prove that witness was actually intimidated by threats but only that they had a reasonable tendency to intimidate. *McBride v. United States* (D.C. 1978, 393 A.2d 123).

Nor that obstructing statements or threats were directly addressed to intimidated witness. — This section does not require that obstructing statements be directly addressed to the allegedly intimidated witnesses or that threats of harm be directed toward such witnesses, and expressions of intent to kill certain witnesses made within earshot of other witnesses could tend to influence or intimidate those who heard the statements and thus constitute obstruction within the meaning of this section. *McBride v. United States* (D.C. 1978, 393 A.2d 123).

Handwriting exemplars rendered with design to obstruct justice. — Conviction for obstruction of justice was proper where defendant's identical twin brother was arrested for utilizing a stolen credit card and was ordered to give handwriting exemplars and the defendant rendered such exemplars with the design to prevent his brother from doing so. *Elliott v. United States* (D.C. 1978, 385 A.2d 183).

Evidence sufficient. — *McBride v. United States* (D.C. 1978, 393 A.2d 123).

Cited in *Brooks v. United States* (D.C. 1978, 396 A.2d 200); *Gilbert v. United States* (D.C. 1978, 395 A.2d 1); *In re C.S.* (D.C. 1977, 384 A.2d 407).

CHAPTER 9.—DOMESTIC RELATIONS

§ 22-901. Cruelty to children.

NOTES TO DECISIONS

Cited in *Cohoon v. United States* (D.C. 1978, 387 A.2d 1098).

CHAPTER 11.—DISORDERLY CONDUCT

§ 22-1107. Unlawful assembly — Profane and indecent language.

NOTES TO DECISIONS

Necessary to find whether words spoken in circumstances threatening breach of peace. — An adjudication of delinquency for violation of this section was reversed where the trial court had failed to make

findings on whether the words were spoken in circumstances that threatened a breach of the peace. *In re M.W.* (D.C. 1978, 383 A.2d 646).

§ 22-1121. Disorderly conduct — Generally.

NOTES TO DECISIONS

Phrase “jostling against” in subdivision (4) has established objective meaning and contemplates a rough physical touching of one individual by another. *In re A.B.* (D.C. 1978, 395 A.2d 59).

“Handbag” language promotes legislative purpose. — Subdivision (4)’s prohibition against placing a hand in the proximity of a person’s pocketbook or handbag is conduct readily understood and comports with the apparent legislative intent to prevent pickpocketing by means of physically touching and then stealthily snatching a purse or pocketbook from the victim. *In re A.B.* (D.C. 1978, 395 A.2d 59).

Subdivision (4) provides notice to public and standards for officials. — The statutory language and history of subdivision (4) provide potential defendants with sufficient notice and police and courts with adequate standards concerning what conduct is proscribed, viz., touching a person with intent to take that person’s

pocketbook or handbag and contents. *In re A.B.* (D.C. 1978, 395 A.2d 59).

Subdivision (4) describes the type of disorderly conduct it intends to punish in terms of three different acts which constitute the proscribed activity, and thus achieves the particularity and clarity of language required of criminal statutes. *In re A.B.* (D.C. 1978, 395 A.2d 59).

Subdivision (4) describes the conduct it proscribes with words that have common meaning and thereby indicates with sufficient specificity the conduct it wishes to reach. *In re A.B.* (D.C. 1978, 395 A.2d 59).

A plain reading of the terms of subdivision (4) indicates that they do put a reasonable person on notice that certain specified behavior is deemed criminal. *In re A.B.* (D.C. 1978, 395 A.2d 59).

Cited in *District of Columbia v. Tschudin* (D.C. 1978, 390 A.2d 986).

CHAPTER 12.—EMBEZZLEMENT

§ 22-1202. Embezzlement by agent, attorney, clerk, servant, or agent of a corporation.

NOTES TO DECISIONS

Cited in *Bethea v. United States* (D.C. 1978, 395 A.2d 787).

CHAPTER 13.—FALSE PRETENSES—FALSE PERSONATION

§ 22-1301. False pretenses.

NOTES TO DECISIONS

Distinction between false pretenses and larceny. — Where defendants induced third parties to purchase goods for them with checks not covered by sufficient funds, they were properly convicted of false pretenses, but not of grand larceny because of the continued validity of the traditional distinction between false pretenses and larceny, i.e., that the victim of false pretenses intends for title to pass whereas the victim of larceny does not. *Locks v. United States* (D.C. 1978, 388 A.2d 873).

Section 46-319 (a) on unemployment compensation fraud is identical with attempted false pretenses as

proscribed by this section and § 22-103. *Lewis v. United States* (D.C. 1978, 389 A.2d 306).

But not with false pretenses. — Since the elements of unemployment compensation fraud declared to be a misdemeanor under § 46-319 do not satisfy the requirements necessary to establish false pretenses under this section and since Congress did not intend that § 46-319 provide the exclusive criminal sanction for unemployment compensation fraud, defendant’s conviction for false pretenses was proper. *Lewis v. United States* (D.C. 1978, 389 A.2d 306).

CHAPTER 14.—FORGERY—FRAUDS

§ 22-1401. Forgery.

NOTES TO DECISIONS

Need for instruction on lack of authority. — Whether lack of authority is considered a separate element of the offense of forgery or a part of the element of falsity, the jury must be advised that without proof of it the prosecution may not succeed; but where the circumstantial evidence against a defendant was strong and the lack of authority was clear from the record, failure to specifically

instruct the jury was only harmless error. *Hall v. United States* (D.C. 1978, 383 A.2d 1086).

Meaning of “signature” in forgery indictment. — Insertion of the name of a payee (even though fictitious) on the face of a check did not constitute a forgery of that payee’s “signature” as alleged in the indictment. *United States v. Peters* (1978, 587 F.2d 1267).

§ 22-1410. Making, drawing, or uttering check, draft, or order with intent to defraud — Proof of intent — “Credit” defined.

NOTES TO DECISIONS

Cited in *Valentine v. United States* (D.C. 1978, 394 A.2d 1374); *Johnson v. United States* (D.C. 1978, 389 A.2d 1353); *Locks v. United States* (D.C. 1978, 388 A.2d 873).

CHAPTER 15.—GAMBLING

§ 22-1501. Lotteries — Promotion — Sale or possession of tickets.

NOTES TO DECISIONS

Allegation insufficient to establish denial of equal protection. — Defendant’s allegation that there were no prosecutions for possessing “legal” lottery tickets such as those sold by Maryland was insufficient to establish a denial of equal protection, which requires a difference in treatment based upon a constitutionally suspect standard. *Davis v. United States* (D.C. 1978, 390 A.2d 976).

Section applied although offense occurred in federal building. — The fact that the offense occurred in a building owned by the United States did not deprive the

Superior Court of jurisdiction. *Davis v. United States* (D.C. 1978, 385 A.2d 757).

And despite mere existence of federal statute prohibiting lotteries there. — The mere existence of a federal statute prohibiting the operation of a lottery on the premises of the Veterans Administration Hospital did not prevent prosecution under this section for the same offense. *Davis v. United States* (D.C. 1978, 385 A.2d 757).

Cited in *United States v. Williams* (1978, 580 F.2d 578, 188 U.S. App. D.C. 315).

§ 22-1502. Possession of lottery or policy tickets.

NOTES TO DECISIONS

Section applied although offense occurred in federal building. — The fact that the offense occurred in a building owned by the United States did not deprive the Superior Court of jurisdiction. *Davis v. United States* (D.C. 1978, 385 A.2d 757).

Cited in *United States v. Williams* (1978, 580 F.2d 578, 188 U.S. App. D.C. 315); *Davis v. United States* (D.C. 1978, 390 A.2d 976).

§ 22-1505. Gambling premises — Definition — Prohibition against maintaining — Forfeiture — Liens — Deposit of moneys in Treasury — Penalty — Subsequent offenses.

NOTES TO DECISIONS

Cited in *United States v. Williams* (1978, 580 F.2d 578, 188 U.S. App. D.C. 315); *Davis v. United States* (D.C. 1978, 390 A.2d 976).

§ 22-1508. Gambling pools and bookmaking — Athletic contest defined.

NOTES TO DECISIONS

Cited in *United States v. Gianaris* (1977, 454 F. Supp. 505); *Davis v. United States* (D.C. 1978, 390 A.2d 976).

CHAPTER 18.—BURGLARY

§ 22-1801. Burglary — Penalties.

NOTES TO DECISIONS

First-degree burglary is lesser included offense of first-degree burglary while armed. *Franey v. United States* (D.C. 1978, 382 A.2d 1019).

Procedure where one conviction out of several improper. — Where jury had been improperly permitted to return verdicts of guilty on counts of receiving stolen property when it had also returned verdicts of guilty on burglary and grand larceny counts, but the convictions for burglary and larceny were proper except for the sentences, which might have been shorter had there not been the accompanying receiving convictions, the proper remedy was to vacate the convictions for receiving stolen goods and the sentences for burglary and larceny and remand for resentencing. *Franklin v. United States* (D.C. 1978, 392 A.2d 516).

Defect in indictment did not require reversal. — Indictment for second-degree burglary was not so defective as to require reversal of conviction where it fairly apprised the defendant of the charges against him and did not prejudice him in any way and where the variance between the indictment and the prosecution's evidence would not permit reprosecution and conviction if

the present indictment were amended to allege the proper occupant of the burglarized apartment. *Ingram v. United States* (D.C. 1978, 392 A.2d 505).

Evidence sufficient. — *Christian v. United States* (D.C. 1978, 394 A.2d 1); *Byrd v. United States* (D.C. 1978, 388 A.2d 1225); *Franey v. United States* (D.C. 1978, 382 A.2d 1019).

Cited in *Harvey v. United States* (D.C. 1978, 395 A.2d 92); *Gilbert v. United States* (D.C. 1978, 395 A.2d 1); *Bridges v. United States* (D.C. 1978, 392 A.2d 1053); *United States v. Harvey* (D.C. 1978, 392 A.2d 1049); *Evans v. United States* (D.C. 1978, 392 A.2d 1015); *Smith v. United States* (D.C. 1978, 389 A.2d 1364); *Brown v. United States* (D.C. 1978, 388 A.2d 451); *Johnson v. United States* (D.C. 1978, 387 A.2d 1108); *Wynn v. United States* (D.C. 1978, 386 A.2d 695); *McDaniels v. United States* (D.C. 1978, 385 A.2d 180); *United States v. Pannell* (D.C. 1978, 383 A.2d 1078); *Crosby v. United States* (D.C. 1978, 383 A.2d 351); *Crowder v. United States* (D.C. 1978, 383 A.2d 336); *Choco v. United States* (D.C. 1978, 383 A.2d 333); *Harling v. United States* (D.C. 1978, 382 A.2d 845); *Thomas v. United States* (D.C. 1978, 382 A.2d 24).

CHAPTER 21.—KIDNAPING

§ 22-2101. Definition and penalty — Conspiracy.

NOTES TO DECISIONS

Section conforms with federal act (18 U.S.C. § 1201) defining kidnapping; consequently decisions of United States courts provide authoritative guidelines for interpretation of this section. *Sinclair v. United States* (D.C. 1978, 388 A.2d 1201).

Applicability of corroboration rule in kidnapping case. — Although corroboration is generally not required in kidnapping cases, the corroboration rule for sex offenses formerly followed in the District of Columbia federal courts would have applied in a federal court prosecution under this section for kidnapping for the purpose of rape. *United States v. Sheppard* (1977, 569 F.2d 114, 186 U.S. App. D.C. 283).

Detention or confinement may merge with principal crime. — The detention or confinement of the victim in crimes such as rape, robbery and assault, if approximately coextensive in time and place with the crime itself, is an integral element of the crime, and like an attempt or a necessarily included lesser offense, it merges with the principal offense in contradistinction to constituting a separate crime. *Sinclair v. United States* (D.C. 1978, 388 A.2d 1201).

Or may constitute separate act of kidnapping. — Where pursuant to a crime such as rape, robbery or assault the victim is subjected to substantial acts of confinement or forcible transportation, the doctrine of

merger cannot be used to treat such acts as mere incidents of the principal crime; rather the intent and text of this section require that such acts be treated as separate acts of kidnapping. *Sinclair v. United States* (D.C. 1978, 388 A.2d 1201).

Depending upon facts of case. — Congress did not intend that every person who commits a rape be also charged and convicted of kidnapping, with its generally more severe penal consequences; rather the facts of each case must be examined to determine whether in fact two separate crimes were committed or whether they merged. *Robinson v. United States* (D.C. 1978, 388 A.2d 1210).

In determining whether the separate crimes of rape and kidnapping should be merged, courts will inquire whether the asportation (or seizure) in a given case was of the type incidental to every rape or whether the confinement and restraint were significant enough of themselves to warrant an independent prosecution for kidnapping. *Robinson v. United States* (D.C. 1978, 388 A.2d 1210).

Prosecutions for both robbery and kidnapping. — The forcible detention and carrying away of a robbery victim which began before and continued after the victim was forced to yield his money and other valuables was not a detention approximately coextensive with or a necessary incident to the crime of robbery; hence conviction for the separate offense of kidnapping was within the intent as

well as the text of this section. *Sinclair v. United States* (D.C. 1978, 388 A.2d 1201).

And felony murder and kidnapping. — It was proper for the court to sentence defendant consecutively for kidnapping and felony murder, since his actions did not involve a single transaction resulting in two crimes but rather a series of interrelated acts resulting in two crimes which are defined by separate statutes that are not in *pari materia*, and since the transaction offended multiple societal interests and constituted separate offenses. *Pynes v. United States* (D.C. 1978, 385 A.2d 772).

Seizure and asportation merged with assault. — Where defendant without a weapon seized and dragged his victim approximately 63 paces over the course of a few moments before throwing her to the ground and attempting to rape her, that seizure and asportation was clearly incidental to the crime of assault with intent to rape and the likelihood of bodily harm was not substantially increased beyond that inherent in every assault with intent to rape; therefore the seizure and asportation did not constitute the separate crime of kidnapping but rather merged with the assault. *Robinson v. United States* (D.C. 1978, 388 A.2d 1210).

Cited in *Fields v. United States* (D.C. 1978, 396 A.2d 522); *Brooks v. United States* (D.C. 1978, 396 A.2d 200); *Smith v. United States* (D.C. 1978, 389 A.2d 1356).

CHAPTER 22.—LARCENY—RECEIVING STOLEN GOODS

§ 22-2201. Grand larceny.

NOTES TO DECISIONS

Value of purloined property distinguishes grand from petty larceny. — An essential element of grand larceny, in fact the only distinction between the felony of grand larceny and the misdemeanor of petit larceny, is a market value for the purloined property of at least \$100. *Moore v. United States* (D.C. 1978, 388 A.2d 889).

Evidence of item's value at time of theft is essential unless evidence of the following three factors coincides to negate the possibility of jury speculation: (1) a very recent purchase of property for substantially more than \$100, (2) mint condition at the time of the theft and (3) property of a sort not subject to prompt depreciation or obsolescence. *Moore v. United States* (D.C. 1978, 388 A.2d 889).

Court would not judicially notice resistance of household appliances to rapid depreciation so that the government had to establish the value of a color television set at the time of theft. *Moore v. United States* (D.C. 1978, 388 A.2d 889).

Distinction between larceny and false pretenses. — Where defendants induced third parties to purchase goods for them with checks not covered by sufficient funds, they were properly convicted of false pretenses but not of grand larceny because of the continued validity of the traditional distinction between those crimes, i.e., that the

victim of false pretenses intends for title to pass whereas the victim of larceny does not. *Locks v. United States* (D.C. 1978, 388 A.2d 873).

Appropriate disposition where evidence supported petit but not grand larceny is to reverse the grand larceny conviction and remand the case for entry of judgment of conviction for petit larceny, and for resentencing. *Moore v. United States* (D.C. 1978, 388 A.2d 889).

Where one of several convictions improper. — Where the jury had been improperly permitted to return verdicts of guilty on counts of receiving stolen property when it had also returned verdicts of guilty on burglary and grand larceny counts, but the convictions for burglary and larceny were proper except for the sentences imposed, which might have been shorter had there not been the accompanying receiving convictions, the proper remedy was to vacate the convictions for receiving stolen goods and the sentences for burglary and larceny and to remand for resentencing. *Franklin v. United States* (D.C. 1978, 392 A.2d 516).

Cited in *Johnson v. United States* (D.C. 1978, 387 A.2d 1108); *United States v. Pannell* (D.C. 1978, 383 A.2d 1078); *Crowder v. United States* (D.C. 1978, 383 A.2d 336); *Thomas v. United States* (D.C. 1978, 382 A.2d 24).

§ 22-2202. Petit larceny — Order of restitution.

NOTES TO DECISIONS

Petit larceny is lesser included offense of robbery. *Dublin v. United States* (D.C. 1978, 388 A.2d 461).

Appropriate disposition where evidence supported petit but not grand larceny is to reverse the grand larceny

conviction and remand the case for entry of judgment of conviction for petit larceny, and for resentencing. *Moore v. United States* (D.C. 1978, 388 A.2d 889).

Cited in *Bridges v. United States* (D.C. 1978, 392 A.2d 1053); *United States v. Harvey* (D.C. 1978, 392 A.2d 1049);

Sinclair v. United States (D.C. 1978, 388 A.2d 1201); *Locks v. United States* (D.C. 1978, 388 A.2d 873); *Montgomery v. United States* (D.C. 1978, 384 A.2d 655); *In re D.L.J.* (D.C. 1978, 383 A.2d 1081).

§ 22-2203. Larceny after trust.

NOTES TO DECISIONS

Cited in *Hall v. United States* (D.C. 1978, 383 A.2d 1086).

§ 22-2204. Unauthorized use of vehicles.

NOTES TO DECISIONS

Cited in *United States v. Day* (1978, 591 F.2d 861).

§ 22-2205. Receiving stolen goods.

NOTES TO DECISIONS

Procedure where one of several convictions improper. — Where the jury had been improperly permitted to return verdicts of guilty on counts of receiving stolen property when it had also returned verdicts of guilty on burglary and grand larceny counts, but the convictions for burglary and larceny were proper except for the sentences, which might have been shorter had there not been the accompanying receiving convictions, the proper remedy was to vacate the

convictions for receiving stolen goods and the sentences for burglary and larceny, and to remand for resentencing. *Franklin v. United States* (D.C. 1978, 392 A.2d 516).

Evidence sufficient. — *Johnson v. United States* (D.C. 1978, 387 A.2d 1108).

Evidence not sufficient. — *Bynum v. United States* (D.C. 1978, 386 A.2d 684).

Evidence sufficient to prove entrapment. — *United States v. Borum* (1978, 584 F.2d 424).

CHAPTER 23.—LIBEL—BLACKMAIL—EXTORTION

§ 22-2301. Libel.

NOTES TO DECISIONS

Elements of action for damages. — Complainant suing for damages for defamation of character based on an allegedly libelous television news broadcast had to show

that the broadcast was false, defamatory and published with some degree of fault. *Harrison v. Washington Post Co.* (D.C. 1978, 391 A.2d 781).

§ 22-2306. Intent to commit extortion by communication of illegal threats and demands — Penalty.

NOTES TO DECISIONS

Subdivision (2) encompasses threats to injure communicated directly to the intended victim. *Mariam v. United States* (D.C. 1978, 385 A.2d 776).

§ 22-2307. Threatening to kidnap or injure a person or damage his property — Penalty.

NOTES TO DECISIONS

Admission of voice spectrographic identification, if error, was harmless in trial charging defendant with making threatening telephone calls where his motive and opportunity were shown by circumstantial evidence corroborating his admissions of the crime to a co-worker

and the aural identification of his voice by two persons who had had ample opportunity to hear the telephoned threats. *Brown v. United States* (D.C. 1978, 384 A.2d 647).

Cited in *Mariam v. United States* (D.C. 1978, 385 A.2d 776).

CHAPTER 24.—MURDER—MANSLAUGHTER

§ 22-2401. Murder in the first degree — Purposeful killing — Killing while perpetrating certain crimes.

NOTES TO DECISIONS

- I. General Consideration.
- II. Liability of Accomplices.

I. GENERAL CONSIDERATION.

Assertion that section is unconstitutionally vague was without merit since the defendant could not realistically claim to have been unaware that his conduct could result in conviction for first-degree murder. *Waller v. United States* (D.C. 1978, 389 A.2d 801).

Purpose of felony murder statute is to protect human life. *Ellis v. United States* (D.C. 1978, 395 A.2d 404).

Indictment and conviction for both felony murder and premeditated murder possible. — There is no legal obstacle to indicting and convicting a person of both felony murder and premeditated murder where those charges arise from a single homicide, because the offenses have different elements: Premeditated murder is a slaying done with “deliberate and premeditated malice,” while felony murder occurs in the course of certain enumerated felonies. *Christian v. United States* (D.C. 1978, 394 A.2d 1).

No legal obstacle prevents the prosecutor from indicting and the jury from convicting a defendant of both first-degree premeditated murder and felony murder under this section. *McFadden v. United States* (D.C. 1978, 395 A.2d 14).

Even though sentences cannot be consecutive. — Fact that a defendant committing a single homicide cannot be given consecutive sentences for both first-degree murder and another crime of homicide does not mean that multiple convictions are impermissible. *McFadden v. United States* (D.C. 1978, 395 A.2d 14).

Two elements requisite for conviction of felony murder are (1) the defendant or an accomplice must have inflicted injury on the decedent from which he died and (2) the injury must have been inflicted in perpetration of a specified felony. *Waller v. United States* (D.C. 1978, 389 A.2d 801).

Underlying felony not lesser included offense of felony murder. — While the underlying felony is an element of felony murder, its principal function is as an intent-divining mechanism which permits the jury to infer the state of mind requisite for conviction of murder in the first degree, and as such it is not a lesser included offense of felony murder. *Waller v. United States* (D.C. 1978, 389 A.2d 801).

The underlying felony does not “merge” into the murder. *McFadden v. United States* (D.C. 1978, 395 A.2d 14).

There can be no merger of armed robbery and felony murder because the societal interests which Congress sought to protect by enacting § 22-3201 (armed robbery)

differ from the societal interests which were meant to be protected by the enactment of this section. *Ellis v. United States* (D.C. 1978, 395 A.2d 404).

There is nothing in either this section or the armed robbery statute to indicate that Congress intended to vitiate conviction for the underlying crime whenever death resulted during its commission. *Ellis v. United States* (D.C. 1978, 395 A.2d 404).

Court properly denied motion to sever count. — In a trial for murder in which the victim was stabbed with a knife, the trial court did not err in denying the defendant’s motion to sever the third count of the indictment charging illegal possession of a sawed-off shotgun, since a reasonable mind could have concluded from the evidence that the defendant had had the shotgun in his possession when he assaulted the deceased and that he could have used either the gun or the knife in that assault. *Dockery v. United States* (D.C. 1978, 385 A.2d 767).

Indictment sufficient though without allegation of specific intent to kill. — Although an indictment did not contain an allegation of specific intent to kill, its sufficiency was determined by practical rather than technical considerations, and the imperfection was not prejudicial. *Hackney v. United States* (D.C. 1978, 389 A.2d 1336).

Instruction on lesser included offenses not necessary. — Where the defendant’s evidence in a prosecution for felony murder and armed robbery was so incredible that it provided no rational basis for a lesser charge of assault with a deadly weapon or simple assault, the trial court was not required to instruct the jury on those lesser included offenses. *Day v. United States* (D.C. 1978, 390 A.2d 957).

Court properly sentenced defendant consecutively for kidnapping and felony murder since his actions did not involve a single transaction resulting in two crimes but rather a series of interrelated acts resulting in two crimes which are defined by separate statutes that are not in pari materia, and because the transaction offended multiple societal interests and constituted separate offenses. *Pynes v. United States* (D.C. 1978, 385 A.2d 772).

Government estopped from using evidence from first trial. — Where in the first trial the jury acquitted defendant of use of an automobile without the owner’s consent, armed robbery and assault with a dangerous weapon, the government was collaterally estopped from having the evidence supporting those counts admitted against the defendant in a second trial charging him with making four sawed-off shotguns, first-degree murder while armed, second-degree murder while armed, unlawful possession of five sawed-off shotguns and being an

accessory after the fact to first-degree and second-degree murder. *United States v. Day* (1978, 591 F.2d 861).

II. LIABILITY OF ACCOMPLICES.

Murder liability of felony participants arises under § 22-105. — This section by its terms imposes felony murder liability solely on the person who does the killing, so that other participants in the felony are exposed to first-degree murder liability only by virtue of § 22-105. *Christian v. United States* (D.C. 1978, 394 A.2d 1).

And in accordance with common-law vicarious liability. — The felony murder liability of an accomplice must be determined in accordance with common-law concepts of vicarious liability. *Christian v. United States* (D.C. 1978, 394 A.2d 1).

Only intent to commit underlying felony need be proved. — No distinction is made between principals and aiders and abettors for purposes of felony murder liability, and only intent to commit the underlying felony need be proved. *Waller v. United States* (D.C. 1978, 389 A.2d 801).

But killing must be in furtherance of underlying felony. — Neither the purpose nor the effect of the 1940 amendment to this section (which added the provisions commencing “or without purpose so to do”) was to render an accomplice liable for a killing without regard to whether it was done in furtherance of the underlying felony. *Christian v. United States* (D.C. 1978, 394 A.2d 1).

Accomplice not liable if homicide fresh and independent product of killer's mind. — There is no criminal responsibility on the part of an accomplice if a homicide is a fresh and independent product of the killer's

mind, outside of or foreign to the common design. *Christian v. United States* (D.C. 1978, 394 A.2d 1).

Failure to give standard jury instruction did not foreclose presenting defense. — Although the trial court in a felony murder case should have given the standard jury instruction that the felony murder liability of an accomplice requires that the killing occur in the course of the felony and in furtherance of the common purpose to commit the felony, instead of instructing the jury that it could convict if it found that the killings occurred “in the course of the felony,” there was no reversible error because the instruction given did not prevent defense counsel from arguing to the jury that the killings were outside the scope of and foreign to the original plan or design. *Christian v. United States* (D.C. 1978, 394 A.2d 1).

Proper to instruct on both aider and abettor and actual killer theories. — Even though the evidence tended to prove that the defendant was the actual killer, it was not inconsistent or misleading for the trial court to instruct on the theory that he was an aider and abettor as well as the actual killer because the greater participation in the offense includes the lesser, and the legal effect is the same. *Hackney v. United States* (D.C. 1978, 389 A.2d 1336).

Evidence sufficient. — *Christian v. United States* (D.C. 1978, 394 A.2d 1); *Byrd v. United States* (D.C. 1978, 388 A.2d 1225).

Cited in *Reavis v. United States* (D.C. 1978, 395 A.2d 75); *Strickland v. United States* (D.C. 1978, 389 A.2d 1325); *Harling v. United States* (D.C. 1978, 387 A.2d 1101); *Givens v. United States* (D.C. 1978, 385 A.2d 24); *Harling v. United States* (D.C. 1978, 382 A.2d 845).

§ 22-2403. Murder in second degree.

NOTES TO DECISIONS

State of mind is critical determination respecting existence of malice for second-degree murder. *Rink v. United States* (D.C. 1978, 388 A.2d 52), citing *Curry v. United States* (D.C. 1974, 322 A.2d 268).

Defendant's expressions of hostility toward victim relevant to state of mind. — Testimony of witnesses concerning defendant's threats and other expressions of hostility toward the victim on prior occasions were relevant to determine her state of mind and admissible for that purpose. *Rink v. United States* (D.C. 1978, 388 A.2d 52).

Defendant's prior aggressive conduct towards deceased is relevant to self-defense claim because it is probative of (1) the existence of malice towards the deceased, (2) whether the defendant was likely to be the aggressor in the encounter at issue and (3) whether the defendant reasonably apprehended a danger of imminent serious bodily harm from the deceased; furthermore, evidence concerning prior instances of hostility, prior assaults and the like is particularly relevant in marital homicide cases. *Rink v. United States* (D.C. 1978, 388 A.2d 52).

Defendant not entitled to manslaughter instruction. — Defendant in second-degree murder prosecution was not entitled to a jury instruction on manslaughter as a lesser included offense where it was undisputed that the victim had been brutally beaten and thus the jury could not rationally infer the absence of malice, an element essential for murder but not present in manslaughter. *Day v. United States* (D.C. 1978, 390 A.2d 957).

Entering manslaughter conviction on remand over defendant's objection improper. — Where defendant was convicted of second-degree murder and the trial court's

refusal to give manslaughter instruction was but one of several errors committed, the trial court on remand could not enter a conviction for manslaughter at the government's request where the defendant objected and sought a new trial. *Pendergrast v. United States* (D.C. 1978, 385 A.2d 173). See also note from prior appeal of same case in 1978 Supp. under catchline “Conviction of lesser offense.”

Voluntary manslaughter is lesser included offense within second-degree murder. *Branch v. United States* (D.C. 1978, 382 A.2d 1033).

Involuntary manslaughter is lesser included offense to murder. *Stewart v. United States* (D.C. 1978, 383 A.2d 330).

Reversal where admissible evidence did not overcome prejudice from hearsay statement. — Conviction was reversed where it could not be said with sufficient certainty that the admissible evidence was so overwhelming that the defendant was not unduly prejudiced by the introduction of a highly damaging hearsay statement as to his holding a gun to the decedent's head. *Campbell v. United States* (D.C. 1978, 391 A.2d 283).

Government estopped from using evidence from first trial. — Where in the first trial the jury acquitted defendant of use of an automobile without the owner's consent, armed robbery and assault with a dangerous weapon, the government was collaterally estopped from having the evidence supporting those counts admitted against the defendant in a second trial charging him with making four sawed-off shotguns, first-degree murder while armed, second-degree murder while armed, unlawful possession of five sawed-off shotguns and being an

accessory after the fact to first-degree and second-degree murder. *United States v. Day* (1978, 591 F.2d 861).

Adoption of diminished capacity concepts province of legislature. — Scope and magnitude of concepts of diminished capacity or partial insanity are such that their adoption is solely within the province of the legislature and cannot be effected by expedient modification of the rules of evidence. *Jones v. United States* (D.C. 1978, 386 A.2d 308).

Evidence sufficient. — *Stewart v. United States* (D.C. 1978, 383 A.2d 330); *Branch v. United States* (D.C. 1978, 382 A.2d 1033).

Cited in *Braxton v. United States* (D.C. 1978, 395 A.2d 759); *Ellis v. United States* (D.C. 1978, 395 A.2d 404); *Peoples v. United States* (D.C. 1978, 395 A.2d 41); *Gaither v. United States* (D.C. 1978, 391 A.2d 1364); *Young v. United States* (D.C. 1978, 391 A.2d 248).

§ 22-2404. Punishment for murder in first and second degrees.

NOTES TO DECISIONS

Provision unconstitutional. — The Supreme Court’s decision in *Furman v. Georgia* (1972, 408 U.S. 238, 92 S. Ct. 2726, 33 L. Ed.2d 346) in effect rendered unconstitutional the provision of this section which permitted capital punishment for first-degree murder at the discretion of the jury. *Harling v. United States* (D.C. 1978, 387 A.2d 1101).

Bar to parole not superseded by federal law. — The general eligibility section (18 U.S.C. § 4205 (a)) of the Federal Parole Act did not supersede the specific 20-year bar to parole contained in this section. *Fraday v. United States Bureau of Prisons* (1978, 570 F.2d 1027, 187 U.S. App. D.C. 118).

§ 22-2405. Punishment for manslaughter.

NOTES TO DECISIONS

Voluntary manslaughter is lesser included offense within second-degree murder. *Branch v. United States* (D.C. 1978, 382 A.2d 1033).

But defendant not entitled to instruction where malice indisputably present. — Defendant in second-degree murder prosecution was not entitled to a jury instruction on manslaughter as a lesser included offense where it was undisputed that the victim had been brutally beaten and thus the jury could not rationally infer the absence of malice, an element essential for murder but not required for manslaughter. *Day v. United States* (D.C. 1978, 390 A.2d 957).

Improper to enter conviction on remand over defendant’s objection. — Where defendant was convicted of second-degree murder and the trial court’s refusal to give manslaughter instruction was but one of several errors committed, the trial court on remand could not enter

a conviction for manslaughter at the government’s request where the defendant objected and sought a new trial. *Pendergrast v. United States* (D.C. 1978, 385 A.2d 173). *See also* note from prior appeal of same case in 1978 Supp. under catchline “Conviction of lesser offense.”

Requisite intent for involuntary manslaughter is supplied by gross or criminal negligence, which is a lack of awareness or failure to perceive the risk of injury from a course of conduct under circumstances in which the actor should have been aware of the risk. *Hawkins v. United States* (D.C. 1978, 395 A.2d 45).

Driving without license not evidence of gross or criminal negligence. — Fact that defendant was driving without a license did not constitute evidence that he was grossly or criminally negligent. *Hawkins v. United States* (D.C. 1978, 395 A.2d 45).

CHAPTER 25.—PERJURY

§ 22-2501. Perjury — Subornation of perjury.

Section referred to in section. 6-1821.

NOTES TO DECISIONS

- I. General Consideration.
- II. Corroboration Requirement.

I. GENERAL CONSIDERATION.

Elements of perjury. — To be convicted of perjury under the District of Columbia Code, a defendant must have taken an oath to be truthful and violated that oath. *Hsu v. United States* (D.C. 1978, 392 A.2d 972).

Perjury indictment must allege falsity. *Hsu v. United States* (D.C. 1978, 392 A.2d 972).

Indictment alleged falsity with sufficient particularity. — Where, in addition to repeating the statutory language, the indictment referred to the defendant’s oath before the judge and further specified the question and offending answer he allegedly gave, this sufficed to inform him of the alleged falsity. *Hsu v. United States* (D.C. 1978, 392 A.2d 972).

Simple allegation of materiality adequate. — A simple allegation in an indictment of the materiality of a

falsehood did not render the indictment deficient for lack of specificity. *Hsu v. United States* (D.C. 1978, 392 A.2d 972).

Acknowledgment of contempt did not negate materiality of perjury. — Even if a defendant's acknowledgment at a hearing on an order to show cause, that he had learned about the temporary restraining order prior to the date set for the hearing, had constituted an admission of contempt for failure to comply with an order actually received, it would not necessarily negate the materiality of his denial of service of the restraining order, which was material to his contumacy during the period between service of the order and his admitted receipt of notice. *Hsu v. United States* (D.C. 1978, 392 A.2d 972).

II. CORROBORATION REQUIREMENT.

Uncorroborated oath of one witness is not enough to establish the falsity of testimony set forth in an indictment as perjury. *Hsu v. United States* (D.C. 1978, 392 A.2d 972).

But two witnesses or one plus independent corroborative evidence suffice. — While two witnesses will establish the falsity of an accused's testimony, one witness plus independent corroborative evidence will also suffice. *Hsu v. United States* (D.C. 1978, 392 A.2d 972).

Independent corroborative evidence need not be sufficient by itself to demonstrate perjury; rather it need only tend to establish an accused's guilt and be inconsistent with his innocence when joined with the testimony of one direct witness. *Hsu v. United States* (D.C. 1978, 392 A.2d 972).

Circumstantial evidence can suffice to corroborate a witness's testimony as to perjury. *Hsu v. United States* (D.C. 1978, 392 A.2d 972).

Jury determines trustworthiness of corroborative evidence, be it direct or circumstantial. *Hsu v. United States* (D.C. 1978, 392 A.2d 972).

CHAPTER 26.—PRISON BREACH—MISPRISIONS

§ 22-2601. Prison breach.

NOTES TO DECISIONS

Cited in *United States v. Cogdell* (1978, 585 F.2d 1130); *United States v. Bailey* (1978, 585 F.2d 1087).

CHAPTER 27.—PROSTITUTION—PANDERING

§ 22-2701. Prostitution — Inviting for purposes of, prohibited.

NOTES TO DECISIONS

Corroboration requirement. — In prosecution for the solicitation of a covert police officer who stopped his car and was approached by the defendant, corroboration of the officer's testimony was required. *Griffin v. United States* (D.C. 1978, 396 A.2d 211).

Decision in *Arnold v. United States* (D.C. 1976, 358 A.2d 335), abrogating the rule that a rape victim's testimony

must be corroborated, did not overturn the need for corroboration in prosecution for solicitation for lewd and immoral purposes. *Griffin v. United States* (D.C. 1978, 396 A.2d 211).

CHAPTER 28.—RAPE

§ 22-2801. Definition and penalty.

NOTES TO DECISIONS

Federal courts no longer require corroboration. — Corroboration of the complainant's testimony is no longer a requirement for conviction in sex offense cases in the District of Columbia federal courts. *United States v. Sheppard* (1977, 569 F.2d 114, 186 U.S. App. D.C. 283).

District's corroboration rule still applicable to other offenses. — The holding in *Arnold v. United States* (D.C.

App. 1976, 358 A.2d 335), abrogating the corroboration rule, is limited to rape and its lesser included offenses. *Griffin v. United States* (D.C. 1978, 396 A.2d 211).

Merger of rape and kidnapping depends on facts of case. — Every person who commits a rape should not also be charged and convicted of kidnapping, with its generally more severe penal consequences; rather the facts of each

case must be examined to determine whether in fact two separate crimes were committed, or whether they merged. *Robinson v. United States* (D.C. 1978, 388 A.2d 1210).

In determining whether the separate crimes of rape and kidnapping should be merged, courts will inquire whether the asportation (or seizure) in a given case was of the type incidental to every rape or whether the confinement and restraint were significant enough of themselves to warrant an independent prosecution for kidnapping. *Robinson v. United States* (D.C. 1978, 388 A.2d 1210).

Defendant not prejudiced by joinder of rape and assault counts. — In a prosecution for rape and assault with intent to rape, joinder of the offenses did not prejudice the defendant where because of the unusual

factual similarities between the two offenses charged evidence of each crime would have been admissible in a separate trial of the other to show identity and motive and, in the case of the charge of assault with intent to rape, to show intent. *Crisafi v. United States* (D.C. 1978, 383 A.2d 1).

Evidence sufficient. — *Crisafi v. United States* (D.C. 1978, 383 A.2d 1).

Cited in *Dobbs v. Neverson* (D.C. 1978, 393 A.2d 147); *Bridges v. United States* (D.C. 1978, 392 A.2d 1053); *Smith v. United States* (D.C. 1978, 389 A.2d 1356); *Sellman v. United States* (D.C. 1978, 386 A.2d 303); *Williams v. United States* (D.C. 1978, 382 A.2d 1).

CHAPTER 29.—ROBBERY

§ 22-2901. Robbery.

NOTES TO DECISIONS

Government must prove assault and larceny under a robbery indictment. *Day v. United States* (D.C. 1978, 390 A.2d 957).

Robbery can involve merely stealthy seizure. *Day v. United States* (D.C. 1978, 390 A.2d 957).

Government need not establish that victim unafraid before robber approached. — To establish the element of putting in fear, the government need not establish that the victim was not in a state of fear before the robber approached. *Dublin v. United States* (D.C. 1978, 388 A.2d 461).

Identity of perpetrator not technically element of offense. — The identity of the perpetrator of an offense, though an indispensable item of proof by the Government, is not considered an “element” of the crime. *United States v. Johnson* (1978, 589 F.2d 716).

Confession sufficient to link accused to armed robbery. — In cases such as armed robbery where the fact that a crime has been committed can be shown without identifying the perpetrator, there need be no link, outside the confession, between the crime and the accused who admits having committed it. *United States v. Johnson* (1978, 589 F.2d 716).

Corroboration of defendant’s admissions. — Where the Government introduced undisputed evidence that an armed robbery had occurred, with several details matching those of the defendant’s admissions, there was adequate corroborative evidence supporting the trustworthiness of those admissions. *United States v. Johnson* (1978, 589 F.2d 716).

Defendant’s corroborated admissions to police officer could be used to corroborate other admissions. *United States v. Johnson* (1978, 589 F.2d 716).

Robbery and assault with dangerous weapon are lesser included offenses of armed robbery. *Franey v. United States* (D.C. 1978, 382 A.2d 1019).

And petit larceny is lesser included offense of robbery. *Dublin v. United States* (D.C. 1978, 388 A.2d 461).

But evidence may not warrant instruction on lesser included offenses. — Where the defendant’s evidence in a prosecution for felony murder and armed robbery was so incredible that it provided no rational basis for a lesser charge of assault with a deadly weapon or simple assault, the trial court was not required to instruct the jury on those lesser included offenses. *Day v. United States* (D.C. 1978, 390 A.2d 957).

An instruction on a lesser included offense of petit larceny was not warranted where there was sufficient evidence establishing the robbery element of “putting in fear” to eliminate any fair possibility that the crime, if committed, could be less than robbery. *Dublin v. United States* (D.C. 1978, 388 A.2d 461).

Dual sentences for robbery under federal and District law impermissible. — Dual sentencing for armed bank robbery under the United States Code and armed robbery under the District of Columbia Code is impermissible, and it is the duty of the trial court to select the counts on which to impose sentence when the jury returns verdicts of guilty under both statutes. *United States v. Johnson* (1978, 589 F.2d 716).

Evidence sufficient. — *United States v. Johnson* (1978, 589 F.2d 716); *Glass v. United States* (D.C. 1978, 395 A.2d 796); *Ellis v. United States* (D.C. 1978, 395 A.2d 404); *Jackson v. United States* (D.C. 1978, 395 A.2d 99); *Christian v. United States* (D.C. 1978, 394 A.2d 1); *In re L. W.* (D.C. 1978, 390 A.2d 435); *Byrd v. United States* (D.C. 1978, 388 A.2d 1225); *Samuels v. United States* (D.C. 1978, 385 A.2d 16); *Franey v. United States* (D.C. 1978, 382 A.2d 1019).

Cited in *United States v. Day* (1978, 591 F.2d 861); *Fraday v. United States Bureau of Prisons* (1978, 570 F.2d 1027, 187 U.S. App. D.C. 118); *Fields v. United States* (D.C. 1978, 396 A.2d 522); *Harvey v. United States* (D.C. 1978, 395 A.2d 92); *Peoples v. United States* (D.C. 1978, 395 A.2d 41); *Evans v. United States* (D.C. 1978, 392 A.2d 1015); *Colter v. United States* (D.C. 1978, 392 A.2d 994); *Smith v. United States* (D.C. 1978, 392 A.2d 990); *Scott v. United States* (D.C. 1978, 392 A.2d 4); *Johnson v. United States* (D.C. 1978, 391 A.2d 1383); *Adair v. United States* (D.C. 1978, 391 A.2d 288); *Shambley v. United States* (D.C. 1978, 391 A.2d 264); *In re D.A.S.* (D.C. 1978, 391 A.2d 255); *Smith v. United States* (D.C. 1978, 389 A.2d 1364); *Smith v. United States* (D.C. 1978, 389 A.2d 1356); *Crews v. United States* (D.C. 1978, 389 A.2d 277); *Sinclair v. United States* (D.C. 1978, 388 A.2d 1201); *Cotton v. United States* (D.C. 1978, 388 A.2d 865); *Shelton v. United States* (D.C. 1978, 388 A.2d 859); *Brown v. United States* (D.C. 1978, 388 A.2d 451); *Brown v. United States* (D.C. 1978, 387 A.2d 728); *Wright v. United States* (D.C. 1978, 387 A.2d 582); *Wiggins v. United States* (D.C. 1978, 386 A.2d 1171); *Williams v. United States* (D.C. 1978, 385 A.2d 760); *Bowman v. United States* (D.C. 1978, 385 A.2d 28); *Patterson v. United States*

(D.C. 1978, 384 A.2d 663); *Cole v. United States* (D.C. 1978, 384 A.2d 651); *Singletary v. United States* (D.C. 1978, 383 A.2d 1064); *Allen v. United States* (D.C. 1978, 383 A.2d

363); *Reed v. United States* (D.C. 1978, 383 A.2d 316); *Harling v. United States* (D.C. 1978, 382 A.2d 845); *Williams v. United States* (D.C. 1978, 382 A.2d 1).

§ 22-2902. Attempt to commit robbery.

NOTES TO DECISIONS

Action beyond mere preparation. — Where defendants had made careful plans, had conducted a dry run of the planned robbery the day before and at the time of their arrest were disguised, heavily armed and proceeding toward the target bank which was less than four blocks away, they had gone beyond mere preparation and were within dangerous proximity of the criminal end sought to be attained, so as to be guilty of attempted robbery. *Jones v. United States* (D.C. 1978, 386 A.2d 308).

Evidence sufficient. — *Christian v. United States* (D.C. 1978, 394 A.2d 1); *Jones v. United States* (D.C. 1978, 386 A.2d 308).

Cited in *Reavis v. United States* (D.C. 1978, 395 A.2d 75); *Peoples v. United States* (D.C. 1978, 395 A.2d 41); *Crews v. United States* (D.C. 1978, 389 A.2d 277); *Sinclair v. United States* (D.C. 1978, 388 A.2d 1201).

CHAPTER 31.—TRESPASS—INJURIES TO PROPERTY

§ 22-3101. Forcible entry and detainer.

NOTES TO DECISIONS

Cited in *Mendes v. Johnson* (D.C. 1978, 389 A.2d 781).

§ 22-3102. Unlawful entry on property.

NOTES TO DECISIONS

Cited in *Waller v. United States* (D.C. 1978, 389 A.2d 801); *Wynn v. United States* (D.C. 1978, 386 A.2d 695).

CHAPTER 32.—WEAPONS

§ 22-3201. Possession, sale, transfer, and use of dangerous weapons — Definition.

NOTES TO DECISIONS

Weapons control law does not conflict with this chapter. — No direct and positive conflict is apparent between the Firearms Control Regulations Act of 1975 (§ 6-1801 et seq.) and this chapter. *McIntosh v. Washington* (D.C. 1978, 395 A.2d 744).

Section 708 of the Firearms Control Regulations Act of 1975 (set out as a note under § 6-1801 in the 1978

Supplement) makes explicit the District of Columbia Council's intention to repeal not Title 22 of the District of Columbia Code but those police regulations which have historically established the gun control framework for this jurisdiction. *McIntosh v. Washington* (D.C. 1978, 395 A.2d 744).

Cited in *Ellis v. United States* (D.C. 1978, 395 A.2d 404).

§ 22-3202. Committing crime when armed — Added punishment.

NOTES TO DECISIONS

Identity of perpetrator technically not element of offense. — The identity of the perpetrator of an offense, though an indispensable item of proof by the Government, is not considered an "element" of the crime. *United States v. Johnson* (1978, 589 F.2d 716).

Confession sufficient link between accused and crime. — In cases such as armed robbery where the fact

that a crime has been committed can be shown without identifying the perpetrator, there need be no link, outside the confession, between the crime and the accused who admits having committed it. *United States v. Johnson* (1978, 589 F.2d 716).

Corroboration of admissions. — Where the Government introduced undisputed evidence that an

armed robbery had occurred, with several details matching those of the defendant’s admissions, there was adequate corroborative evidence supporting the trustworthiness of those admissions. *United States v. Johnson* (1978, 589 F.2d 716).

Defendant’s corroborated admissions to police officer could be used to corroborate other admissions. *United States v. Johnson* (1978, 589 F.2d 716).

Conviction reversed where impact of damaging hearsay uncertain. — Defendant’s conviction of second-degree murder while armed was reversed where it could not be said with sufficient certainty that the evidence which was properly admitted was so overwhelming that he was not impermissibly prejudiced by a highly damaging hearsay statement as to his holding a gun to the decedent’s head. *Campbell v. United States* (D.C. 1978, 391 A.2d 283).

First-degree burglary is lesser included offense of first-degree burglary while armed. *Franey v. United States* (D.C. 1978, 382 A.2d 1019).

Robbery and assault with dangerous weapon are lesser included offenses of armed robbery. *Franey v. United States* (D.C. 1978, 382 A.2d 1019).

Defendant not always entitled to instruction on lesser included offenses. — Where the defendant’s evidence in a prosecution for felony murder and armed robbery was so incredible that it provided no rational basis for a lesser charge of assault with a deadly weapon or simple assault, the trial court was not required to instruct the jury on those lesser included offenses. *Day v. United States* (D.C. 1978, 390 A.2d 957).

Assault with dangerous weapon merged with assault to commit robbery while armed. — Conviction for assault with a dangerous weapon was vacated by the trial judge as having merged with the count of assault with intent to commit robbery while armed. *Forbes v. United States* (D.C. 1978, 390 A.2d 453).

Distinct purposes of felony murder and armed robbery statutes. — The purpose of the armed robbery statute is to protect individuals from being unwillingly deprived of their personal property through the use of armed force, while the felony murder statute purports to protect human life. *Ellis v. United States* (D.C. 1978, 395 A.2d 404).

Support conclusion that those offenses cannot merge. — There can be no merger of armed robbery and felony murder because the societal interests which Congress sought to protect by enacting this section differ from the societal interests which were meant to be protected by the enactment of § 22-2401 (felony murder). *Ellis v. United States* (D.C. 1978, 395 A.2d 404).

There is nothing in either the armed robbery or the felony murder statute to indicate that Congress intended to vitiate conviction for the underlying crime whenever death resulted during its commission. *Ellis v. United States* (D.C. 1978, 395 A.2d 404).

Dual sentences under federal and District statutes impermissible. — Dual sentencing for armed bank robbery under the United States Code and armed robbery under the District of Columbia Code is impermissible, and it is the duty of the trial court to select the counts on which to impose sentence when the jury returns verdicts of guilty

under both statutes. *United States v. Johnson* (1978, 589 F.2d 716).

Government estopped from introducing evidence from first trial. — Where in the first trial the jury acquitted defendant of use of an automobile without the owner’s consent, armed robbery and assault with a dangerous weapon, the government was collaterally estopped from having the evidence supporting those counts admitted against the defendant in a second trial charging him with making four sawed-off shotguns, first-degree murder while armed, second-degree murder while armed, unlawful possession of five sawed-off shotguns and being an accessory after the fact to first-degree and second-degree murder. *United States v. Day* (1978, 591 F.2d 861).

Evidence sufficient. — *United States v. Johnson* (1978, 589 F.2d 716); *Glass v. United States* (D.C. 1978, 395 A.2d 796); *Ellis v. United States* (D.C. 1978, 395 A.2d 404); *Jackson v. United States* (D.C. 1978, 395 A.2d 99); *Christian v. United States* (D.C. 1978, 394 A.2d 1); *Jones v. United States* (D.C. 1978, 386 A.2d 308); *Allen v. United States* (D.C. 1978, 383 A.2d 363); *Stewart v. United States* (D.C. 1978, 383 A.2d 330); *Branch v. United States* (D.C. 1978, 382 A.2d 1033); *Franey v. United States* (D.C. 1978, 382 A.2d 1019).

Cited in *United States v. Day* (1978, 591 F.2d 861); *Fields v. United States* (D.C. 1978, 396 A.2d 522); *Brooks v. United States* (D.C. 1978, 396 A.2d 200); *Braxton v. United States* (D.C. 1978, 395 A.2d 759); *Harvey v. United States* (D.C. 1978, 395 A.2d 92); *Reavis v. United States* (D.C. 1978, 395 A.2d 75); *Peoples v. United States* (D.C. 1978, 395 A.2d 41); *McBride v. United States* (D.C. 1978, 393 A.2d 123); *Bridges v. United States* (D.C. 1978, 392 A.2d 1053); *Evans v. United States* (D.C. 1978, 392 A.2d 1015); *Smith v. United States* (D.C. 1978, 392 A.2d 990); *Scott v. United States* (D.C. 1978, 392 A.2d 4); *Gaither v. United States* (D.C. 1978, 391 A.2d 1364); *Adair v. United States* (D.C. 1978, 391 A.2d 288); *Shambley v. United States* (D.C. 1978, 391 A.2d 264); *Smith v. United States* (D.C. 1978, 389 A.2d 1364); *Smith v. United States* (D.C. 1978, 389 A.2d 1356); *Crews v. United States* (D.C. 1978, 389 A.2d 277); *Sinclair v. United States* (D.C. 1978, 388 A.2d 1201); *Cotton v. United States* (D.C. 1978, 388 A.2d 865); *Brown v. United States* (D.C. 1978, 388 A.2d 451); *Rink v. United States* (D.C. 1978, 388 A.2d 52); *Harling v. United States* (D.C. 1978, 387 A.2d 1101); *Brown v. United States* (D.C. 1978, 387 A.2d 728); *Wright v. United States* (D.C. 1978, 387 A.2d 582); *Ward v. United States* (D.C. 1978, 386 A.2d 1180); *Sellman v. United States* (D.C. 1978, 386 A.2d 303); *Cureton v. United States* (D.C. 1978, 386 A.2d 278); *Pynes v. United States* (D.C. 1978, 385 A.2d 772); *Dockery v. United States* (D.C. 1978, 385 A.2d 767); *Williams v. United States* (D.C. 1978, 385 A.2d 760); *Givens v. United States* (D.C. 1978, 385 A.2d 24); *Samuels v. United States* (D.C. 1978, 385 A.2d 16); *Cole v. United States* (D.C. 1978, 384 A.2d 651); *Singletary v. United States* (D.C. 1978, 383 A.2d 1064); *Crosby v. United States* (D.C. 1978, 383 A.2d 351); *Jefferson v. United States* (D.C. 1978, 382 A.2d 1030); *Harling v. United States* (D.C. 1978, 382 A.2d 845); *Nowlin v. United States* (D.C. 1978, 382 A.2d 9); *Williams v. United States* (D.C. 1978, 382 A.2d 1).

§ 22-3203. Unlawful possession of a pistol.

NOTES TO DECISIONS

Cited in *Metts v. United States* (D.C. 1978, 388 A.2d 47); *Jackson v. United States* (D.C. 1978, 385 A.2d 786); *Givens v. United States* (D.C. 1978, 385 A.2d 24).

§ 22-3204. Carrying concealed weapons.

NOTES TO DECISIONS

Offense has three essential elements — carrying an operable pistol without a license with the intent to do those two acts. *Jackson v. United States* (D.C. 1978, 395 A.2d 99).

“Place of business” exception refers to proprietary or possessory, not merely managerial, interest. *Scott v. United States* (D.C. 1978, 392 A.2d 4).

This section, does not expressly or implicitly create an exception allowing a person “in charge” of premises to carry a pistol without a license. *Scott v. United States* (D.C. 1978, 392 A.2d 4).

Conviction sustained though pistol disassembled. — A conviction for carrying a pistol without a license can be sustained when all of the parts of a disassembled pistol are shown to have been conveniently accessible to the defendant, those parts can be quickly and easily reassembled into an operable gun and the defendant was observed holding an object that reasonably appeared to be related to the gun. *Rouse v. United States* (D.C. 1978, 391 A.2d 790).

Evidence of possession or convenient access essential. — To support a conviction for carrying a pistol without a license, the record must show some facts manifesting possession or at least convenient access. *Jackson v. United States* (D.C. 1978, 395 A.2d 99).

Where on the facts a jury could not reasonably find that the defendants had jointly possessed the unlicensed pistol, in the absence of evidence that the defendant in question had carried it, his conviction under this section had to be reversed. *Jackson v. United States* (D.C. 1978, 395 A.2d 99).

Mere presence of pistol in getaway car insufficient. — Where it was undisputed that only one defendant had carried the weapon during the armed robbery and there was no direct evidence that the other had ever carried or had convenient access to it before, during or after the robbery, conviction under this section was reversed despite strong circumstantial evidence that the unlicensed pistol was in the getaway car in which both defendants were riding, because a contrary ruling would in effect have announced a rule deeming all passengers in a motor vehicle to be carrying a pistol which only one of them has been seen to possess or control. *Jackson v. United States* (D.C. 1978, 395 A.2d 99).

Section does not define “felony.” *Scott v. United States* (D.C. 1978, 392 A.2d 4).

Prior court-martial conviction as felony. — Congress cannot have intended to exclude all court-martial convictions from consideration for enhancement of punishment purposes under this section. *Scott v. United States* (D.C. 1978, 392 A.2d 4).

Trial court did not err in characterizing a defendant’s prior court-martial conviction for assault of a superior

commissioned officer as a “felony” conviction for the purpose of converting his sentence from a misdemeanor, pursuant to § 22-3215, to a felony. *Scott v. United States* (D.C. 1978, 392 A.2d 4).

Relationship of section to federal provisions. — Since the “unlawful” carrying element of 18 U.S.C. § 924 (c) (2) (punishing unlawfully carrying a firearm during the commission of a felony) involves the offense under this section, dual convictions and separate sentences under 18 U.S.C. § 924 (c) (2) and this section are not authorized. *United States v. Dorsey* (1978, 591 F.2d 922).

Although dual convictions and separate sentences under this section and 18 U.S.C. § 924 (c) (2) (unlawfully carrying a firearm during the commission of a felony) are not authorized, there is no statutory or constitutional stricture that prevents separate sentences from being imposed for violations of 18 U.S.C. § 922(k) (receipt of a pistol in interstate commerce with serial number removed) and either 18 U.S.C. § 924 (c) (2) or this section. *United States v. Dorsey* (1978, 591 F.2d 922).

Because this section involved unlicensed carrying, while 18 U.S.C. § 922(k) required a removed serial number and an interstate nexus, these two statutory provisions are not the same offense. *United States v. Dorsey* (1978, 591 F.2d 922).

Evidence sufficient. — *Hamilton v. United States* (D.C. 1978, 395 A.2d 24); *Stewart v. United States* (D.C. 1978, 383 A.2d 330).

Evidence sufficient to prove entrapment. — *United States v. Borum* (1978, 584 F.2d 424, U.S. App. D.C.).

Cited in *United States v. Sheppard* (1977, 569 F.2d 114, 186 U.S. App. D.C. 283); *United States v. Dixon* (1978, 446 F. Supp. 58); *Fields v. United States* (D.C. 1978, 396 A.2d 522); *Ellis v. United States* (D.C. 1978, 395 A.2d 404); *Little v. United States* (D.C. 1978, 393 A.2d 94); *Evans v. United States* (D.C. 1978, 392 A.2d 1015); *Glenn v. United States* (D.C. 1978, 391 A.2d 772); *Smith v. United States* (D.C. 1978, 389 A.2d 1356); *Strickland v. United States* (D.C. 1978, 389 A.2d 1325); *Gibson v. United States* (D.C. 1978, 388 A.2d 1214); *Kleinbart v. United States* (D.C. 1978, 388 A.2d 878); *Harling v. United States* (D.C. 1978, 387 A.2d 1101); *Brown v. United States* (D.C. 1978, 387 A.2d 728); *Ward v. United States* (D.C. 1978, 386 A.2d 1180); *Jones v. United States* (D.C. 1978, 385 A.2d 750); *Singletary v. United States* (D.C. 1978, 383 A.2d 1064); *Allen v. United States* (D.C. 1978, 383 A.2d 363); *Crosby v. United States* (D.C. 1978, 383 A.2d 351); *Alston v. United States* (D.C. 1978, 383 A.2d 307).

§ 22-3206. Issue of licenses to carry pistol.

NOTES TO DECISIONS

Cited in *Betha v. United States* (D.C. 1978, 395 A.2d 787).

§ 22-3214. Possession of certain dangerous weapons prohibited — Exceptions.

NOTES TO DECISIONS

Proper not to sever shotgun count from trial for stabbing murder. — In a trial for murder in which the victim was stabbed with a knife, the trial court did not err in denying the defendant's motion to sever the third count of the indictment charging illegal possession of a sawed-off shotgun, since a reasonable mind could have concluded from the evidence that he had had the shotgun

in his possession when he assaulted the deceased and could have used either the gun or the knife in that assault. *Dockery v. United States* (D.C. 1978, 385 A.2d 767).
Cited in *McBride v. United States* (D.C. 1978, 393 A.2d 123); *Allen v. United States* (D.C. 1978, 383 A.2d 363); *Jefferson v. United States* (D.C. 1978, 382 A.2d 1030).

§ 22-3215. Penalties.

NOTES TO DECISIONS

Cited in *Scott v. United States* (D.C. 1978, 392 A.2d 4).

CHAPTER 35.—SEXUAL PSYCHOPATHS

§ 22-3501. Indecent acts — Children.

NOTES TO DECISIONS

Cited in *In re H.M.* (D.C. 1978, 386 A.2d 707); *Douglas v. United States* (D.C. 1978, 386 A.2d 289); *Johnson v. United States* (D.C. 1978, 385 A.2d 742).

§ 22-3502. Sodomy.

NOTES TO DECISIONS

Court's failure to give required corroboration instruction was harmless error where the circumstances provided adequate independent evidence that accusations of sodomy and assault with intent to commit rape were not a fabrication. *Williams v. United States* (D.C. 1978, 385 A.2d 760).

Cited in *Colter v. United States* (D.C. 1978, 392 A.2d 994); *Sellman v. United States* (D.C. 1978, 386 A.2d 303); *Douglas v. United States* (D.C. 1978, 386 A.2d 289); *Williams v. United States* (D.C. 1978, 382 A.2d 1).

CHAPTER 36.—IMPLEMENTS OF CRIME

§ 22-3601. Possession of implements of crime — Penalty.

NOTES TO DECISIONS

Cited in *In re J.G.J.* (D.C. 1978, 388 A.2d 472).

TITLE 23. — CRIMINAL PROCEDURE

Cross references. For Criminal Justice Advisory Board, see § 2-2501 et seq. For registration of state officials entering District to enforce laws relating to alcoholic beverages or tobacco or to conduct an investigation or surveillance, see § 4-1101 et seq. For adjudication of certain traffic offenses, see § 40-1101 et seq.

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CHAPTER 1. — GENERAL PROVISIONS

§ 23-101. Conduct of prosecutions.

NOTES TO DECISIONS

Cited in *In re Kossow* (D.C. 1978, 393 A.2d 97).

§ 23-104. Appeals by United States and District of Columbia.

NOTES TO DECISIONS

Constitution bars appeal and retrial after dismissal for insufficient evidence. — The Double Jeopardy Clause of the Fifth Amendment does not bar government appeal and retrial after a dismissal unless it was premised on some factual determination of the insufficiency of the evidence of the defendant's guilt. *Sedgwick v. Superior Court* (1978, 584 F.2d 1044).

Appeal and retrial proper where prosecution allegedly withheld exculpatory material. — A dismissal or mistrial ruling predicated on *Brady v. Maryland* (1963, 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215) (relating to the prosecution's failure to disclose exculpatory material to the defense) and granted on defendant's motion is answerable to appellate review and does not bar retrial if the appellate court finds no *Brady* violation. *Sedgwick v. Superior Court* (1978, 584 F.2d 1044).

Or failed to inform court of potential jury contamination. — Prosecutorial misconduct in failing to inform the court of potential jury contamination prior to the impaneling and swearing in of the jurors did not warrant erecting double jeopardy bar to retrial of defendant. *United States v. Harvey* (D.C. 1978, 392 A.2d 1049).

Standards on review. — Review must afford appellees all legitimate inferences from the testimony and uncontroverted facts of record, and the appellate court must accept the inferences drawn by the trial court as to the facts before it if they are supportable under any reasonable view of the evidence. *United States v. Covington* (D.C. 1978, 385 A.2d 164).

Pretrial government appeal time as factor when defendant claims unconstitutional delay. — Pretrial government appeal time, whether short or long, will generally be a factor against the government when a defendant claims an unconstitutional pretrial delay unless the prosecutor moves to expedite the appeal under the authority of subsection (e). *Day v. United States* (D.C. 1978, 390 A.2d 957).

Cited in *United States v. Hamilton* (D.C. 1978, 390 A.2d 449); *Springer v. United States* (D.C. 1978, 388 A.2d 846); *United States v. Davis* (D.C. 1978, 387 A.2d 1091); *United States v. Pannell* (D.C. 1978, 383 A.2d 1078); *United States v. Lowery* (D.C. 1977, 382 A.2d 1007).

§ 23-106. Witnesses for defense; fees.

NOTES TO DECISIONS

Limitation on ordering personal testimony of certain officers. — Cabinet members and chief administrative officials should not be called to testify personally unless a clear showing is made that such a proceeding is essential to prevent prejudice or injustice to the party requesting the testimony. *Davis v. United States* (D.C. 1978, 390 A.2d 976).

§ 23-110. Remedies on motion attacking sentence.

NOTES TO DECISIONS

- I. General Consideration.
- II. Grant of Hearing.

I. GENERAL CONSIDERATION.

Section is substantially identical to 28 U.S.C. § 2255, and federal court interpretations of that section provide guidance in construing this section. *Pettaway v. United States* (D.C. 1978, 390 A.2d 981); *Gibson v. United States* (D.C. 1978, 388 A.2d 1214); *Butler v. United States* (D.C. 1978, 388 A.2d 883).

Section has no application in civil commitment context. *Bension v. Meredith* (1978, 455 F. Supp. 662).

But does apply in context of certain new trial motions.—If a convict pending appeal has moved the trial court for a new trial and asserted grounds in his motion that would be cognizable under this section, and the government's remedy upon vacation of the sentence would be a new trial, then that motion should be considered as a motion under this section. *Johnson v. United States* (D.C. 1978, 385 A.2d 742).

Section should not produce mechanical jurisprudence triggered merely by an artful allegation of facts dehors the record on appeal. *Glass v. United States* (D.C. 1978, 395 A.2d 796); *Gregg v. United States* (D.C. 1978, 395 A.2d 36).

Noncompliance with formalities of criminal procedure rule is not collaterally reviewable unless the claimed error of law was a fundamental defect which inherently resulted in a complete miscarriage of justice. *Butler v. United States* (D.C. 1978, 388 A.2d 883).

Effective counsel not denied where tactical value of alibi defense questionable. — The trial court did not err in denying a motion to vacate a sentence on the contention that the defendant was denied effective assistance of counsel due to counsel's failure to assert an alibi defense, where the tactical disadvantages of such defense outweighed its evidentiary value. *Wright v. United States* (D.C. 1978, 387 A.2d 582).

Nor where erroneous advice insignificant to plea. — Order denying relief under this section was affirmed where the record supported the trial court's finding that counsel's erroneous advice was an insignificant factor in the prisoner's decision to plead guilty. *Bailey v. United States* (D.C. 1978, 385 A.2d 32).

Nor where attorney effectively presented sole substantial defense. — Where the only substantial defense ever alleged by defendant was his lack of knowledge of the offense, and his counsel placed the essence of that defense before the jury in a reasonably effective manner, the trial judge was correct in denying defendant's motion for a new trial pursuant to this section. *Glass v. United States* (D.C. 1978, 395 A.2d 796).

But increase in sentence after service commenced invalid. — Where a court granted a prisoner's request that his sentence be modified to run concurrently with a previously imposed sentence, but one week later the court issued another order denying the prisoner's request, the latter order was invalid as a constitutionally prohibited increase in sentence after service had commenced. *United States v. Robinson* (D.C. 1978, 388 A.2d 469).

Strict principles of res judicata inapplicable to these proceedings. — Although at some point the limitation of subsection (e) on successive motions becomes applicable, strict principles of res judicata do not apply in proceedings under this section. *Pettaway v. United States* (D.C. 1978, 390 A.2d 981).

Federal jurisdiction over claim of person never convicted. — Subsection (g) did not remove jurisdiction from the Federal courts where habeas corpus relief was sought by a person who was not convicted because a mistrial had been called and his case had never gone to the jury. *Sedgwick v. Superior Court* (1978, 584 F.2d 1044).

II. GRANT OF HEARING.

Standards for summary denial without hearing. — A court may summarily deny a motion under this section only when the motion, files or other records contain data which belie the prisoner's claim and such contradiction is not susceptible of reasonable explanation. *Pettaway v. United States* (D.C. 1978, 390 A.2d 981).

In denying a motion without a hearing, the court must conclude that under no circumstances could the petitioner establish facts warranting relief. *Pettaway v. United States* (D.C. 1978, 390 A.2d 981).

Weighted in favor of prisoner. — Because this section provides a habeas corpus type remedy for District of Columbia prisoners, any question whether a hearing is appropriate should be resolved in the affirmative. *Gibson v. United States* (D.C. 1978, 388 A.2d 1214).

Because this section is a remedy of virtually last resort, any question whether a hearing is appropriate should be resolved in the affirmative. *Glass v. United States* (D.C. 1978, 395 A.2d 796).

Especially where he alleges ineffective assistance of counsel. — Where a motion under this section not only contains allegations which, if true, merit relief and are not vague, conclusory or wholly incredible, but also alleges ineffective assistance of counsel, the necessity for a hearing is increased because the nature of the complaint, i.e., ineffective assistance of counsel which resulted in a plea of guilty, may necessarily involve matters outside the record. *Gibson v. United States* (D.C. 1978, 388 A.2d 1214).

But hearing not automatic even when effectiveness of counsel challenged. — A motion for new trial alleging ineffective assistance of counsel does not automatically require a hearing. *Glass v. United States* (D.C. 1978, 395 A.2d 796).

Where all of defendant's allegations concerning ineffective assistance of counsel related solely to facts already in the record and only required the trial court to apply the correct legal standard to reach its conclusion as to the merits of the claim, and the facts of the record conclusively showed that he was entitled to no relief, the appellate court upheld the trial court's decision not to conduct a hearing. *Glass v. United States* (D.C. 1978, 395 A.2d 796).

Hearing required. — *Gibson v. United States* (D.C. 1978, 388 A.2d 1214); *Johnson v. United States* (D.C. 1978, 385 A.2d 742).

Three categories of claims do not merit hearings: (1) palpably incredible claims, (2) assertions which even if true would not entitle the movant to relief under the terms of subsection (a) and (3) vague and conclusory allegations. *Gregg v. United States* (D.C. 1978, 395 A.2d 36); *Pettaway v. United States* (D.C. 1978, 390 A.2d 981); *Gibson v. United States* (D.C. 1978, 388 A.2d 1214).

Claims must withstand some checking for verity. — Just as palpably incredible claims can be summarily dismissed, so also can those claims which cannot withstand initial checking for verity or, at the least, the probability of verity. *Gregg v. United States* (D.C. 1978, 395 A.2d 36).

And must state claim requiring vacation or alteration of sentence. — If it appears that the motion does not state a claim which if established would require the vacation or alteration of the sentence, no hearing is required. *Glass v. United States* (D.C. 1978, 395 A.2d 796).

Specifications of motion under this section must indicate the absence of a fair trial in the real sense of that term, must not be couched in conclusory terms with essentially no factual foundation and, even if true, must not be patently frivolous on their face. *Glass v. United States* (D.C. 1978, 395 A.2d 796); *Gibson v. United States* (D.C. 1978, 388 A.2d 1214).

Motion must explain exact nature of alleged ineffectiveness of counsel. — The trial court is not required to conduct a hearing on a motion under this section alleging ineffective assistance of counsel if the exact nature of the asserted ineffectiveness is not explained in the motion. *Glass v. United States* (D.C. 1978, 395 A.2d 796).

Vague and conclusory motions dismissed without hearing. — A motion is vulnerable to dismissal as vague and conclusory when a prisoner does not present a factual foundation in some detail. *Pettaway v. United States* (D.C. 1978, 390 A.2d 981).

Claim under this section challenging the voluntariness of the claimant’s guilty plea and his attorney’s effectiveness and alleging promises of a sentence of about five years and a sentence reduction after a year or so was too vague and conclusory to necessitate a hearing. *Pettaway v. United States* (D.C. 1978, 390 A.2d 981).

Claims which survive vagueness test may not necessarily be ripe for full evidentiary hearings; in some instances a motion for summary judgment is a more appropriate way to proceed initially. *Pettaway v. United States* (D.C. 1978, 390 A.2d 981).

§ 23-111. Proceedings to establish previous convictions.

NOTES TO DECISIONS

Cited in *Ellis v. United States* (D.C. 1978, 395 A.2d 404); *Scott v. United States* (D.C. 1978, 392 A.2d 4); *Kleinbart v. United States* (D.C. 1978, 388 A.2d 878).

§ 23-112. Consecutive and concurrent sentences.

NOTES TO DECISIONS

Defendant committing single homicide cannot be given consecutive sentences for first-degree murder and another homicide crime. *McFadden v. United States* (D.C. 1978, 395 A.2d 14).

Cited in *Allen v. United States* (D.C. 1978, 383 A.2d 363).

CHAPTER 3. — INDICTMENTS AND INFORMATIONSDiv>Subchapter II. — Joinder

§ 23-311. Joinder of offenses and of defendants.

NOTES TO DECISIONS

Risk of prejudice when offenses of similar character joined for trial. — When offenses of a “similar character” are joined at trial there is a substantial risk of prejudice. *Evans v. United States* (D.C. 1978, 392 A.2d 1015).

Similar characteristics too speculative to permit joinder for trial. — Any characteristics of possible similarity between two burglary offenses were too

speculative to identify with sufficient certainty the defendant as a perpetrator of both of the crimes, and therefore the offenses should have been severed for trial. *Evans v. United States* (D.C. 1978, 392 A.2d 1015).

Cited in *Hackney v. United States* (D.C. 1978, 389 A.2d 1336); *Strickland v. United States* (D.C. 1978, 389 A.2d 1325).

§ 23-313. Relief from prejudicial joinder.

NOTES TO DECISIONS

Risk of prejudice when offenses of similar character joined for trial. — When offenses of a “similar character” are joined at trial there is a substantial risk of prejudice. *Evans v. United States* (D.C. 1978, 392 A.2d 1015).

So that severance should be granted absent special circumstances. — When joinder of offenses is based on the fact that the crimes are of a “similar character,” a motion to sever should be granted unless (1) the evidence

as to each offense is separate and distinct and thus unlikely to be amalgamated in the jury's mind into a single inculpatory mass or (2) the evidence of each of the joined crimes would be admissible at the separate trial of the others. *Evans v. United States* (D.C. 1978, 392 A.2d 1015).

Characteristics of possible similarity between two burglary offenses were too speculative to identify with sufficient certainty the defendant as a perpetrator of both of the crimes, and therefore the offenses should have been severed for trial. *Evans v. United States* (D.C. 1978, 392 A.2d 1015).

Residual potential for prejudice was outweighed by economy and efficiency interests in trying two counts of robbery together, for evidence of the second robbery would have been fully admissible in a separate trial of the first even though evidence of the first robbery would have been only partially admissible in a separate trial of the second. *Samuels v. United States* (D.C. 1978, 385 A.2d 16).

Defendant appealing prejudicial joinder must show clear abuse of discretion. — To convince an appellate court that he has been prejudiced by joinder, a defendant

must demonstrate a clear abuse of discretion by the trial court, and no such abuse can be found unless it appears (1) that the jury may have cumulated evidence of separate crimes to find guilt, (2) that the jury may have improperly inferred a criminal disposition and treated the inference as evidence of guilt or (3) that the defendant may have become embarrassed or confounded in presenting defenses to different charges. *Strickland v. United States* (D.C. 1978, 389 A.2d 1325).

Trial court did not err in denying motion to sever the counts of an indictment involving one murder, about which the defendant wished to testify, from those charging him with three other related murders. *Strickland v. United States* (D.C. 1978, 389 A.2d 1325).

Trial court's refusal to sever three homicide counts was proper where evidence of all the charges against the defendant would have been mutually admissible at each of the separate trials had the severance motion been granted and where the evidence showed the existence of a common scheme or plan. *Hackney v. United States* (D.C. 1978, 389 A.2d 1336).

Subchapter III. — Sufficiency

§ 23-323. Perjury.

NOTES TO DECISIONS

Section is purely procedural. *Hsu v. United States* (D.C. 1978, 392 A.2d 972).

Compliance with this section and court rule satisfies constitutional criteria. — Compliance with Super. Ct. Cr. R. 7 (c) and this section satisfies the constitutional criteria of *Russell v. United States* (1962, 369 U.S. 749, 82 S. Ct. 1038, 8 L. Ed. 2d 240), which provided that an indictment must contain all the elements of the offense charged, must sufficiently apprise the defendant of the charges so that he can prepare to meet them and must be clear enough, when coupled with the record of the proceedings, to preclude double jeopardy. *Hsu v. United States* (D.C. 1978, 392 A.2d 972).

Section does not modify rule's balance between specificity and conciseness. — Court rejected the argument that when the government indicts for perjury, this section modifies the balance struck between specificity and conciseness in Super. Ct. Cr. R. 7 (c), governing the form of indictments. *Hsu v. United States* (D.C. 1978, 392 A.2d 972).

Section and rule require same allegations of falsity. — As to the allegations of falsity required for a valid perjury indictment, the procedural requirements of this section and Super. Ct. Cr. R. 7 (c) are the same. *Hsu v. United States* (D.C. 1978, 392 A.2d 972).

Perjury indictment must allege falsity. *Hsu v. United States* (D.C. 1978, 392 A.2d 972).

Indictment clearly charged making of false statements. — Where an indictment in language similar to the perjury statute charged that the defendant "having

taken an oath that he would testify truly, did unlawfully, wilfully, knowingly and contrary to such oath, state material matters which he did not believe to be true," this language clearly charged appellant with making false statements, i.e., he took an oath to testify truthfully and did not do so. *Hsu v. United States* (D.C. 1978, 392 A.2d 972).

And sufficed to inform defendant of charge. — Where in addition to repeating the statutory language the indictment referred to the defendant's oath before the judge and further specified the question and offending answer he allegedly gave, this sufficed to inform the defendant of the alleged falsity. *Hsu v. United States* (D.C. 1978, 392 A.2d 972).

Simple allegation as to materiality did not render indictment deficient for lack of specificity. *Hsu v. United States* (D.C. 1978, 392 A.2d 972).

Alleged perjury material despite testimony admitting partial falsehood. — Even if the defendant's acknowledgment set forth in his perjury indictment, that he had learned about a temporary restraining order prior to the date set for hearing on the order to show cause, had constituted an admission of contempt for failure to comply with an order actually received, that admission would not necessarily negate the materiality of his denial of service of the restraining order, which related to his contumacy between service and the admitted receipt of notice and was the gravamen of the perjury indictment. *Hsu v. United States* (D.C. 1978, 392 A.2d 972).

CHAPTER 5. — WARRANTS AND ARRESTS

Subchapter I. — Definitions

§ 23-501. Definitions.

NOTES TO DECISIONS

Deputy U.S. Marshall assigned to courtroom security detail was law enforcement officer within the meaning of this section. *Lucas v. United States* (1977, 443 F. Supp. 539).

Cited in *United States v. Boettcher* (1978, 588 F.2d 89).

Subchapter III. — Wire Interception and Interception of Oral Communications

§ 23-541. Definitions.

NOTES TO DECISIONS

Pen registers not within scope of wiretapping law. — Pen registers, which record outgoing numbers called on a particular telephone line, are not prohibited or regulated

by the wiretap provisions of the District of Columbia Code. *Davis v. United States* (D.C. 1978, 390 A.2d 976).

§ 23-546. Applications for authorization or approval of interception of wire or oral communications.

NOTES TO DECISIONS

Additional authorization required when communication relates to offense outside subsection (c). — This section requires additional authorization when the contents of a communication relate to an offense other than those listed in subsection (c). *Davis v. United States* (D.C. 1978, 390 A.2d 976).

authorization of a wiretap was proper and the court was informed from the beginning of the range of offenses under investigation, the government’s failure to seek additional authorization to intercept communications relating to an offense not enumerated in subsection (c) did not prevent use of that wiretap evidence at trial. *Davis v. United States* (D.C. 1978, 390 A.2d 976).

But evidence not necessarily suppressed for failure to seek additional authorization. — Where the initial

§ 23-547. Procedure for authorization or approval of interception of wire or oral communications.

NOTES TO DECISIONS

General recognition that wiretaps neither initial step nor last resort. — In construing 18 U.S.C. § 2518 (1) (c) and (3) (c), courts have interpreted the requirement also appearing in subsections (a) (3) and (c) (3) of this section

flexibly, recognizing that wiretaps are neither a routine initial step nor an absolute last resort. *United States v. Williams* (1978, 580 F.2d 578, 188 U.S. App. D.C. 315).

§ 23-551. Procedure for disclosure and suppression of intercepted wire or oral communications.

NOTES TO DECISIONS

Movant to suppress must have standing. — Before an accused may complain that prosecution evidence obtained by electronic eavesdropping should be suppressed because it was come by illegitimately, he must first establish his standing; that is, he must show that the eavesdropping

was directed at him, that the government intercepted his conversations or that the wiretapped communications occurred at least partly on his premises. *United States v. Williams* (1978, 580 F.2d 578, 188 U.S. App. D.C. 315).

Subchapter IV.—Arrest Warrant and Summons

§ 23-561. Issuance, form, and contents.

NOTES TO DECISIONS

Warrant held issued under law of United States. — Felony arrest warrant issued under this section and directed to any United States Marshal for service within the United States was issued under a “law of the United

States” within the meaning of 18 U.S.C. § 1071 (proscribing the harboring of persons in order to prevent their arrest). *United States v. Boettcher* (1978, 588 F.2d 89).

§ 23-562. Execution and return.

NOTES TO DECISIONS

Right to prompt presentment is fundamental constitutional right. *Lively v. Cullinane* (1978, 451 F. Supp. 1000).

Standard for evaluating pre-presentment procedures. — Police processing procedures before presentment to a magistrate violate the Fourth Amendment unless they detain the arrestee only so long as needed to complete the administrative steps incident to arrest. *Lively v. Cullinane* (1978, 451 F. Supp. 1000).

The police can justify each delay before presentment only by a strong showing that it is necessitated by a

substantial administrative need. *Lively v. Cullinane* (1978, 451 F. Supp. 1000).

Police procedures which unconstitutionally delayed presentment before a magistrate included lineups, interviews and the completion of forms which could have been accomplished after presentment or from other sources, fingerprinting and photographing which could easily have followed presentment, and failure to consider processing and presentment times when training and scheduling personnel. *Lively v. Cullinane* (1978, 451 F. Supp. 1000).

§ 23-563. Territorial and other limits.

NOTES TO DECISIONS

Nation-wide reach exercise of national legislative power. — In giving warrants under subsection (a) nation-wide reach, Congress was exercising its power as a national and not as a strictly local legislature. *United States v. Boettcher* (1978, 588 F.2d 89).

Warrant invalid as matter of law. — Where a computer printout which police officers examined prior to an arrest indicated that the arrest warrant for a

misdemeanor had been issued approximately 18 months previously, the officers knew or reasonably should have known that that warrant was invalid as a matter of law, and the arrestee thus had an action for false arrest and imprisonment. *Woodward v. District of Columbia* (D.C. 1978, 387 A.2d 726).

Cited in *Christian v. United States* (D.C. 1978, 394 A.2d 1).

Subchapter V.—Arrest Without Warrant

§ 23-581. Arrests without warrant by law enforcement officers.

NOTES TO DECISIONS

Section is for most part a codification of common law. *United States v. Hamilton* (D.C. 1978, 390 A.2d 449).

Ultimate misdemeanor charge would not necessarily invalidate arrest under subsection (a) (1) (A). — The fact that a defendant was charged with a misdemeanor violation of § 33-402 (a) did not preclude finding his arrest valid under subsection (a) (1) (A). *United States v. Hamilton* (D.C. 1978, 390 A.2d 449).

Lawful arrest under subsection (a) (1) (A). — Police officer effected lawful arrest under subsection (a) (1) (A) where he acted in reliance on information provided by his partner, who had purchased a narcotic pill from the

defendant and her companion, and where he was aware that such a sale could have supported a federal felony charge. *United States v. Hamilton* (D.C. 1978, 390 A.2d 449).

Under subsection (a) (1) (B). — Where a deputy U.S. Marshall legally detained party outside a courthouse for questioning regarding a possible breach of security at a courtroom and requested a driver's license for identification, whereupon the detainee forcibly grabbed the deputy, there was probable cause to arrest him under subsection (a) (1) (B) for assaulting and interfering with

a federal officer in the performance of his official duties. *Lucas v. United States* (1977, 443 F. Supp. 539).

Officer may assert probable cause to arrest in defense of suit. — Under the common law of the District of Columbia, probable cause to effectuate an arrest is a defense available to a law enforcement officer sued for the torts of assault, battery and false arrest. *Lucas v. United States* (1977, 443 F. Supp. 539).

Meaning of probable cause in that context. — An officer defending a civil suit for assault, battery and false

arrest need not prove probable cause in the constitutional sense but only his good faith and reasonable belief that probable cause existed for the arrest. *Lucas v. United States* (1977, 443 F. Supp. 539).

Scope of authority to arrest on misdemeanor drug charges. — Prior to the enactment of § 33-402 (b), a police officer could not effect an arrest on misdemeanor drug charges unless he had personally observed commission of the offense. *United States v. Hamilton* (D.C. 1978, 390 A.2d 449).

CHAPTER 13.—PRETRIAL SERVICES AGENCY
AND PRETRIAL DETENTION

Subchapter I.—District of Columbia Pretrial Services Agency	Sec. 23-1309. References to “Bail Agency” deemed to be to “Pretrial Services Agency.”
Sec. 23-1301. District of Columbia Pretrial Services Agency.	

*Subchapter I.—District of Columbia
Pretrial Services Agency*

§ 23-1301. District of Columbia Pretrial Services Agency.

The District of Columbia Pretrial Services Agency (hereafter in this subchapter referred to as the “Agency”) shall continue in the District of Columbia and shall secure pertinent data and provide for any judicial officer in the District of Columbia or any officer or member of the Metropolitan Police Department issuing citations, reports containing verified information concerning any individual with respect to whom a bail or citation determination is to be made. (July 29, 1970, Pub. L. 91-358, § 210 (a), title II, 84 Stat. 639; Sept. 27, 1978, Pub. L. 95-388, §§ 1, 2, 92 Stat. 753.)

Effect of Amendment.
1978 — Act Sept. 27, 1978, Pub. L. 95-388, 92 Stat. 753, amended section by striking out “District of Columbia Bail Agency” and inserting “District of Columbia Pretrial Services Agency” and by changing the heading of the

section to “District of Columbia Pretrial Services Agency.” Act also changed title of chapter 13 to “Pretrial Services Agency and Pretrial Detention” and title of subchapter I to “District of Columbia Pretrial Services Agency.”

§ 23-1303. Interviews with detainees; investigations and reports; information as confidential; consideration and use of reports in making bail determinations.

NOTES TO DECISIONS

Cited in *Campbell v. McGruder* (1978, 580 F.2d 521, 188 U.S. App. D.C. 258).

§ 23-1309. References to “Bail Agency” deemed to be to “Pretrial Services Agency.”

Any reference in any law, rule, regulation, document, or record of the United States or the District of Columbia to the District of Columbia Bail Agency shall be deemed to be a reference to the District of Columbia Pretrial Services Agency. (Sept. 27, 1978, Pub. L. 95-388, § 3, 92 Stat. 753.)

*Subchapter II.—Release and Pretrial
Detention*

§ 23-1321. Release in noncapital cases prior to trial.

NOTES TO DECISIONS

Cited in *Campbell v. McGruder* (1978, 580 F.2d 521, 188 U.S. App. D.C. 258).

§ 23-1322. Detention prior to trial.

NOTES TO DECISIONS

Constitutional standard that must be satisfied before pretrial detention is permitted is the same as that for arrest — probable cause to believe that the suspect has committed a crime. *Campbell v. McGruder* (1978, 580 F.2d 521, 188 U.S. App. D.C. 258).

Pretrial detention must not violate detainee’s right to bail. *Campbell v. McGruder* (1978, 580 F.2d 521, 188 U.S. App. D.C. 258).

Due process denied where detainee not advised of probation revocation proceeding. — Due process rights of defendant, who was arrested for robbery and was at that time on conditional probation following a conviction of sodomy, were violated where at his presentment he was ordered held without bail pursuant to subsection (e) but the record failed to show that he was apprised of when a probation revocation hearing would take place or of the specific grounds on which the government intended to seek revocation. *Colter v. United States* (D.C. 1978, 392 A.2d 994).

Standard for measuring constitutionality of conditions of pretrial confinement. — Absent a violation

of specific constitutional guarantees, the constitutionality of the conditions of pretrial confinement can be measured only by balancing the liberty interests of the pretrial detainee against the need of the state to protect the safety of the community. *Campbell v. McGruder* (1978, 580 F.2d 521, 188 U.S. App. D.C. 258).

Pretrial detainees generally retain more rights than convicted prisoners. *Campbell v. McGruder* (1978, 580 F.2d 521, 188 U.S. App. D.C. 258).

Particular entitlements judicially ordered. — Appellate court approved orders of federal district court ensuring that pretrial detainees at the District of Columbia jail would be provided a minimum space of their own, a regular change of linen and outer clothing, daily recreation, prompt psychiatric care, carefully regulated use of restraints and a rational security classification to prevent excessively harsh confinement and possibly to prepare the way for contact visits. *Campbell v. McGruder* (1978, 580 F.2d 521, 188 U.S. App. D.C. 258).

Cited in *Harvey v. United States* (D.C. 1978, 385 A.2d 36).

§ 23-1323. Detention of addict.

NOTES TO DECISIONS

Cited in *Campbell v. McGruder* (1978, 580 F.2d 521, 188 U.S. App. D.C. 258).

§ 23-1324. Appeal from conditions of release.

NOTES TO DECISIONS

Cited in *Campbell v. McGruder* (1978, 580 F.2d 521, 188 U.S. App. D.C. 258).

§ 23-1325. Release in capital cases or after conviction.

NOTES TO DECISIONS

Cited in *Campbell v. McGruder* (1978, 580 F.2d 521, 188 U.S. App. D.C. 258); *Harvey v. United States* (D.C. 1978, 385 A.2d 36).

§ 23-1326. Release of material witnesses.

NOTES TO DECISIONS

Cited in *Christian v. United States* (D.C. 1978, 394 A.2d 1).

§ 23-1327. Penalties for failure to appear.

NOTES TO DECISIONS

Cited in *Reavis v. United States* (D.C. 1978, 395 A.2d 75); *Choco v. United States* (D.C. 1978, 383 A.2d 333).

§ 23-1328. Penalties for offenses committed during release.

NOTES TO DECISIONS

Cited in *Harvey v. United States* (D.C. 1978, 395 A.2d 92); *United States v. Lowery* (D.C. 1977, 382 A.2d 1007).

TITLE 24.—PRISONERS AND THEIR TREATMENT

Cross reference. For Criminal Justice Advisory Board, see § 2-2501 et seq.

Chap.	Sec.
1. Probation	24-101
2. Indeterminate Sentences and Paroles	24-201
3. Insane Criminals	24-301
4. Prisons and Prisoners	24-401
7. Interstate Agreement on Detainers	24-701

CHAPTER 1.—PROBATION

§ 24-104. Discharge from or continuance of probation — Modification or revocation of order.

NOTES TO DECISIONS

Oral pronouncement prevailed over conflicting written order as to term of original sentence. — Where on one count of uttering an instrument with intent to defraud the trial judge pronounced a suspended sentence of one to three years with two years of probation and restitution as a condition of probation, but on the same day he signed a judgment and probation order stating the suspended term of imprisonment to be from one to two

years, the oral pronouncement prevailed over the written order because the former was clear and unambiguous, and therefore the judge who imposed a one to three year sentence upon revocation of probation did not place defendant in double jeopardy. *Valentine v. United States* (D.C. 1978, 394 A.2d 1374).

Cited in *Valentine v. United States* (D.C. 1978, 394 A.2d 1374).

CHAPTER 2.—INDETERMINATE SENTENCES AND PAROLES

§ 24-203. Imposition of indeterminate sentences authorized — Life and death sentences.

NOTES TO DECISIONS

Effect of Federal Parole Act on 15-year minimum sentence. — Federal court suggested, though it was not required to decide, that the general eligibility section (18 U.S.C. § 4205 (a)) of the Federal Parole Act did not

supersede the specific 15-year minimum sentence prescribed in subsection (a). *Frady v. United States Bureau of Prisons* (1978, 570 F.2d 1027, 187 U.S. App. D.C. 118).

§ 24-206. Revocation of parole after retaking — Hearing — New parole.

NOTES TO DECISIONS

Circumstances when delay justifies release of prisoner. — Fifth Circuit required a showing of both unreasonable delay and prejudice before a person was

entitled to release because of a delay in obtaining a final parole revocation hearing. *Beck v. Wilkes* (1979, 589 F.2d 901).

CHAPTER 3.—INSANE CRIMINALS

§ 24-301. Commitment of persons of unsound mind to the district of Columbia General Hospital — Certification to the court — Acquittal by jury on grounds of insanity — Confinement in a mental institution — Conditions for release after confinement — Conditional release — Expenses — Writ of habeas corpus — Inconsistent provisions of Federal Statutes superseded — Return order for apprehension of escaped inmates — Procedure and time limitation for pleading insanity as a defense.

NOTES TO DECISIONS

Purpose of 1970 amendment. — The 1970 amendment of this section attempted to accommodate the acquittee's constitutional rights and provide rehabilitative opportunities while protecting the public against anticipated danger. *Jones v. United States* (D.C. 1978, 396 A.2d 183).

Function of psychiatric expert under subsection (a). — An examination under subsection (a) provides the court with the judgment of a neutral and detached expert, and while his opinion may be utilized by the defendant, the expert is not always available to advise and assist in the development of an insanity defense. *Gaither v. United States* (D.C. 1978, 391 A.2d 1364).

Different from that of experts furnished under § 11-2605 (a). — Subsection (a) providing for a mental examination pursuant to court order must be distinguished from § 11-2605 (a), which authorizes the furnishing of psychiatric experts to indigent criminal defendants. *Gaither v. United States* (D.C. 1978, 391 A.2d 1364).

Due process not violated by denial of examination at extradition hearing. — Defendant's Fifth Amendment due process rights were not violated by the denial of his request at his extradition hearing for an immediate psychiatric examination since it was not clear that the government's misstatement allegedly resulting in the denial was an intentional device to gain a tactical advantage, and in any event the defendant was not substantially prejudiced because he received a psychiatric examination shortly after he was transferred to the Maryland authorities pursuant to the extradition order and the results were available to him in his District of Columbia trial. *Shreeves v. United States* (D.C. 1978, 395 A.2d 774).

Character of subsection (d) release hearing. — Whereas the § 21-545(b) commitment hearing represents a de novo process, the release hearing provided for in subsection (d) of this section is arguably an updating process to determine how present mental status compares with earlier findings which had been urged by the defendant himself. *Jones v. United States* (D.C. 1978, 396 A.2d 183).

Acquittee entitled to periodic review of commitment. — As a matter of constitutional equal protection, acquitees committed under this section are entitled to periodic review similar to that afforded to civilly committed persons under § 21-548. *Jones v. United States* (D.C. 1978, 396 A.2d 183).

But not to release or civil proceedings upon expiration of hypothetical prison term. — Defendant lawfully committed upon finding of not guilty by reason of insanity was not constitutionally entitled to release or civil commitment proceedings under § 21-545 upon expiration of the maximum period for which he could have been imprisoned, since the length of a hypothetical prison term has no relationship to the rehabilitative goal and safety concerns of hospital confinement. *Jones v. United States* (D.C. 1978, 396 A.2d 183).

Directed verdict on insanity defense. — Assuming that the trial court may direct a verdict for a defendant on the insanity question, the evidence would have to be virtually conclusive since the defendant has the burden of proving insanity by a preponderance of the evidence under subsection (j). *Gilbert v. United States* (D.C. 1978, 395 A.2d 1).

Presumption of continued insanity not conclusive. — Where defendant committed crime while under continuing adjudication of insanity the jury could presume that he was still insane when he committed the offense, but that presumption was not conclusive; rather, the continuing adjudication of insanity was sufficient to prove insanity by a preponderance of the evidence within the meaning of subsection (j) unless the government's evidence sufficed to raise enough doubt that the defendant failed to carry his burden. *Gilbert v. United States* (D.C. 1978, 395 A.2d 1).

Adoption of diminished capacity concepts province of legislature. — Scope and magnitude of concepts of diminished capacity or partial insanity are such that their adoption is solely within the province of the legislature and cannot be effected by expedient modification of the rules of evidence. *Jones v. United States* (D.C. 1978, 386 A.2d 308).

§ 24-302. Commitment of mentally ill person while serving sentence.

NOTES TO DECISIONS

Release at expiration of short-term sentence subject to certification under § 24-303. — A prisoner transferred from a penal facility to a mental hospital under this section is not entitled to mandatory release at the expiration of his short-term sentence unless he has been appropriately certified as being "restored to mental health" pursuant to § 24-303 because these sections sufficiently reflect the

spirit of the good time limitations embodied in 18 U.S.C. § 4241, so that the same restrictions established by the federal provision properly apply to transferees under the local statute. *Dobbs v. Neverson* (D.C. 1978, 393 A.2d 147).

Cited in *Campbell v. McGruder* (1978, 580 F.2d 521, 188 U.S. App. D.C. 258).

§ 24-303. Restoration to sanity — Delivery of person to court — Delivery of person to Director of Department of Corrections.

NOTES TO DECISIONS

Release of transferred prisoner at expiration of short-term sentence subject to certification. — A prisoner transferred to a mental hospital under § 24-302 is not entitled to mandatory release at the expiration of his short-term sentence unless he has been appropriately certified as being “restored to mental health” pursuant to

this section because these sections sufficiently reflect the spirit of the good time limitations embodied in 18 U.S.C. § 4241, so that the same restrictions established by the federal provision properly apply to transferees under the local statute. *Dobbs v. Neverson* (D.C. 1978, 393 A.2d 147).

CHAPTER 4.—PRISONS AND PRISONERS

Subchapter I.—Prisons

§ 24-405. Deduction for good conduct — Discharge.

NOTES TO DECISIONS

Cited in *Dobbs v. Neverson* (D.C. 1978, 393 A.2d 147).

§ 24-425. Place of imprisonment — Designation by Attorney General — Transfer.

NOTES TO DECISIONS

Reasons for transfer are immaterial so long as the transfer is to an institution permitted by 18 U.S.C. § 4082(b) or the District of Columbia Code and the occasion of transfer does not give rise to any procedural due process rights. *Beck v. Wilkes* (1979, 589 F.2d 901).

No constitutionally protected interest was infringed when prisoner was transferred from one institution to

another since he had no justifiable expectation, rooted in law, that he would be transferred only for misbehavior or upon occurrence of some other specified event. *Smith v. Carlson* (1978, 447 F. Supp. 422).

Cited in *Campbell v. McGruder* (1978, 580 F.2d 521, 188 U.S. App. D.C. 258); *Dobbs v. Neverson* (D.C. 1978, 393 A.2d 147).

Subchapter II.—Department of Corrections

§ 24-442. Powers of Department over institutions — Rules and regulations.

NOTES TO DECISIONS

Standard for measuring constitutionality of conditions of pretrial confinement. — Absent a violation of specific constitutional guarantees, the constitutionality of the conditions of pretrial confinement can be measured only by balancing the liberty interests of the pretrial detainee against the need of the state to protect the safety of the community. *Campbell v. McGruder* (1978, 580 F.2d 521, 188 U.S. App. D.C. 258).

Pretrial detainees generally retain more rights than convicted prisoners. *Campbell v. McGruder* (1978, 580 F.2d 521, 188 U.S. App. D.C. 258).

Each restriction of jail regimen upon pretrial detainees must be examined carefully to determine if it is justified by substantial necessities of jail administration. *Campbell v. McGruder* (1978, 580 F.2d 521, 188 U.S. App. D.C. 258).

Certain conditions subjected to closest scrutiny. — Conditions of confinement that are likely to impair a

pretrial detainee’s mental or physical health or that impede the preparation of his defense or induce him to plead guilty should be subjected to the closest scrutiny and can be justified only by the most compelling necessity. *Campbell v. McGruder* (1978, 580 F.2d 521, 188 U.S. App. D.C. 258).

Court order protecting specific entitlements. — Appellate court approved orders of federal district court ensuring that pretrial detainees at the District of Columbia jail would be provided a minimum space of their own, a regular change of linen and outer clothing, daily recreation, prompt psychiatric care, carefully regulated use of restraints and a rational security classification to prevent excessively harsh confinement and possibly to prepare the way for contact visits. *Campbell v. McGruder* (1978, 580 F.2d 521, 188 U.S. App. D.C. 258).

Cited in *Gale v. United States* (D.C. 1978, 391 A.2d 230).

Subchapter IV.—Work Release Program

§ 24-462. Recommendations — Requests for privilege — Necessity for order of sentencing court.

NOTES TO DECISIONS

Cited in *Campbell v. McGruder* (1978, 580 F.2d 521, 188 U.S. App. D.C. 258).

CHAPTER 7.—INTERSTATE AGREEMENT ON DETAINERS

§ 24-701. Enactment of Interstate Agreement on Detainers on behalf of the United States and the District of Columbia.

NOTES TO DECISIONS

- I. General Consideration.
- II. What Constitutes Detainer.

I. GENERAL CONSIDERATION.

Primary purpose of Interstate Agreement on Detainers is to encourage the expeditious disposition of charges pending against a prisoner in another jurisdiction and consequently to minimize the adverse impact of foreign prosecutions on rehabilitative programs undertaken during incarceration in the original jurisdiction. *Gale v. United States* (D.C. 1978, 391 A.2d 230).

Rights under Agreement can be waived. *Christian v. United States* (D.C. 1978, 394 A.2d 1).

And constitutional standard inapplicable. — The traditional standard for waiver of constitutional rights (a knowing and intelligent waiver) does not apply to waiver of a defendant's statutory right under the Agreement. *Christian v. United States* (D.C. 1978, 394 A.2d 1).

Claim that Agreement has been violated should be raised at earliest possible time before the witnesses and the parties have gone to the burden and expense of a trial. *Christian v. United States* (D.C. 1978, 394 A.2d 1).

Notice to prisoner sufficient though not in compliance with Article III (c). — Written notice of a detainer, even though it did not strictly comply with the notification provision of Article III (c), was sufficient and was received promptly enough to impose the burden of substantial compliance with the Agreement on the prisoner, who was obliged to direct a written request for a speedy trial to the District in order to trigger the 180-day period. *McBride v. United States* (D.C. 1978, 393 A.2d 123).

Purpose of Article IV (e). — Article IV (e) was designed to promote the speedy disposition of outstanding charges and to avoid shuttling back and forth between jurisdictions and disrupting consistent treatment programs. *Christian v. United States* (D.C. 1978, 394 A.2d 1).

Prisoner's right under Article IV (e) neither fundamental nor constitutional. — The right of a prisoner under Article IV (e) not to be transferred back to his original place of imprisonment before he is tried is neither fundamental nor constitutional. *Christian v. United States* (D.C. 1978, 394 A.2d 1).

And normally waived if not asserted at trial. — Absent a miscarriage of justice, an error seriously affecting the status of the judicial system, or good cause shown, the failure to present a claim under Article IV (e)

at the trial level constitutes a waiver of those rights under Super. Ct. Cr. R. 12 (d). *Christian v. United States* (D.C. 1978, 394 A.2d 1).

II. WHAT CONSTITUTES DETAINER.

Meaning of detainer. — A detainer is not a demand for the immediate surrender of a prisoner but only a request from the official lodging the detainee that he be notified before the inmate is released from custody. *Christian v. United States* (D.C. 1978, 394 A.2d 1).

Prison must be entered upon term of imprisonment. — A prisoner temporarily incarcerated pending disposition of charges is not entitled to invoke the protections of the Agreement. *Christian v. United States* (D.C. 1978, 394 A.2d 1).

Where at the time of their transfers to the District of Columbia prisoners were confined in local Philadelphia facilities pending disposition of outstanding charges, they had not entered upon a "term of imprisonment" within the meaning of the Agreement, and so its provisions did not apply to them. *Christian v. United States* (D.C. 1978, 394 A.2d 1).

"Come-up" order not a detainer. — A "come-up" order, which is an administrative notice from a Superior Court clerk's office to the United States Marshall's Service to produce a prisoner, is not a detainer within the meaning of the Agreement. *United States v. Palmer* (D.C. 1978, 393 A.2d 143).

Whereas the granting of a "come-up" order is routine and rarely the product of an independent judicial determination, a detainer, the filing of which does not in and of itself effect the transfer of a prisoner from one authority to another, requires an additional judicial or executive decision similar to that made in a removal or extradition proceeding. *Gale v. United States* (D.C. 1978, 391 A.2d 230).

A "come-up" order involves only the intra-jurisdictional transfer of prisoners and thus differs from a detainer, which is a notice to authorities in a foreign jurisdiction that a named individual is wanted on a felony or arrest warrant for criminal proceedings in the issuing jurisdiction. *Gale v. United States* (D.C. 1978, 391 A.2d 230).

Effects of "come-up" order similar to writ of habeas corpus ad prosequendum. — Because a "come-up" order works the same limited intrusion into the institutional life of its subject as a federal writ of habeas corpus ad prosequendum, it is not to be regarded as a detainer. *Gale v. United States* (D.C. 1978, 391 A.2d 230).

Federal writ of habeas corpus ad prosequendum not a detainer. — A writ of habeas corpus ad prosequendum issued by a federal court to state authorities and directing the production of a state prisoner for trial on criminal charges is not a detainer within the meaning of the Agreement. *United States v. Palmer* (D.C. 1978, 393 A.2d 143).

The Interstate Agreement on Detainers does not apply to writs of habeas corpus ad prosequendum because such writs do not cause the problems created by detainers which the IAD was meant to relieve. *United States v. Cogdell* (1978, 585 F.2d 1130).

Cited in *United States v. Bailey* (1978, 585 F.2d 1087).

PART V
GENERAL STATUTES

- TITLE 25—ALCOHOLIC BEVERAGES.
TITLE 26—BANKS AND OTHER FINANCIAL INSTITUTIONS.
TITLE 28—COMMERCIAL INSTRUMENTS AND TRANSACTIONS.
TITLE 29—CORPORATIONS.
TITLE 31—EDUCATION AND CULTURAL INSTITUTIONS.
TITLE 32—ELEEMOSYNARY, CURATIVE, CORRECTIONAL, AND PENAL INSTITUTIONS.
TITLE 33—FOOD AND DRUGS.
TITLE 34—HOTELS AND LODGING-HOUSES.
TITLE 35—INSURANCE.
TITLE 36—LABOR.
TITLE 38—LIENS.
TITLE 40—MOTOR VEHICLES.
TITLE 41—PARTNERSHIPS.
TITLE 43—PUBLIC UTILITIES.
TITLE 44—RAILROADS AND OTHER CARRIERS.
TITLE 45—REAL PROPERTY.
TITLE 46—SOCIAL SECURITY.
TITLE 47—TAXATION AND FISCAL AFFAIRS.
TITLE 49—COMPILATION AND CONSTRUCTION OF CODE.

TITLE 25.—ALCOHOLIC BEVERAGES

Chap.	Sec.
1. Alcoholic Beverage Control	25-101

CHAPTER 1.—ALCOHOLIC BEVERAGE CONTROL

Sec.	Sec.
25-103. Definitions.	25-124. Beverage taxes — Method of collection — Class
25-111. License classifications—Fees.	C or D licensees — Reports.

§ 25-103. Definitions.

In the interpretation of this chapter, unless the context indicates a different meaning:

* * * * *

(r) the words “legitimate theater” mean premises in which the principal business shall be the operation of live theatrical, operatic or dance performances, or such other lawful adult entertainment or recreational facilities as the Alcoholic Beverage Control Board, giving due regard to the convenience of the public and the strict avoidance of sales prohibited by this chapter, shall by regulation classify for eligibility. The words shall not include a motion picture theater.
(As amended Apr. 18, 1978, D.C. Law 2-73, § 3, 24 DCR 7066.)

Effect of Amendment. 1978 — Act April 18, 1978, D.C. Law 2-73, amended section by adding subsection (r). Legislative History of Law 2-73. Law 2-73 was introduced in Council and assigned Bill No. 2-206, which was referred to the Committee on Finance and Revenue.	The Bill was adopted on first, amended first, and second readings on November 22, 1977, December 6, 1977 and January 10, 1978, respectively. Signed by the Mayor on February 9, 1978, it was assigned Act No. 2-149 and transmitted to both Houses of Congress for its review.
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§ 25-106. Jurisdiction of Board over licenses — Appeal from revocation — Duties.

NOTES TO DECISIONS

Arbitrary and capricious denial of license could justify intrusion by judiciary. — Although the Beverage Control Board is the expert body given the right, power and jurisdiction over issuance, transfer, revocation and suspension of liquor licenses, there could come a point when the Board’s denial of a license would evidence such

arbitrary and capricious conduct that a court order mandating issuance of a license would become necessary and appropriate. *Jameson’s Liquors, Inc. v. District of Columbia Alcoholic Beverage Control Bd.* (D.C. 1978, 384 A.2d 412).

§ 25-111. License classifications — Fees.

Licenses issued under authority of this chapter shall be of twelve kinds:

* * * * *

(g) *Retailer’s license, class C.* — Such a license shall be issued only for a bona fide restaurant, hotel, legitimate theater, or club, or a passenger-carrying marine vessel serving meals, or a club car or a dining car on a railroad. It shall authorize the holder thereof to keep for sale and to sell spirits, wine, and beer at the place therein described for consumption only in said place. Except in the case of clubs, hotels, and passenger-carrying marine vessels serving meals in interstate commerce of one hundred miles or more, no beverage shall be sold or served to a customer in any closed container. In the case of hotels, alcoholic beverages may also be sold and served in the private room of a registered guest. In the case of clubs, alcoholic beverages may be sold and served in any room or area available only to bona fide members of such club or their bona fide guests, or both. No license shall be issued to a club which has not been established for at least three months immediately prior to the making of the application for such license. All alcoholic beverages offered for sale or sold by the holder of such licenses may be displayed and dispensed in full sight of the purchaser.

The fee for such a license shall be for a restaurant, \$825 per annum; for a hotel, under one hundred rooms, \$825 per annum; for a hotel of one hundred or more rooms, \$1,650 per annum; for a legitimate theater, \$425 per annum; for a club, \$425 per annum; for a marine vessel serving meals in interstate commerce of one hundred miles or more and for each railroad dining car or club car, \$3 per month or \$20 per annum: Provided, that such a license may be issued to any company engaged in interstate commerce covering all dining, club and lounge cars operated by such company on railroads within the District of Columbia upon the payment of an annual fee of \$100; for all other passenger-carrying marine vessels serving meals, \$75 per month or \$825 per annum.

(h) *Retailer’s license, class D.* — Such a license shall be issued only for bona fide restaurant, tavern, hotel, legitimate theater, or club, or a passenger-carrying marine vessel serving meals, light lunches, or sandwiches, or a club car or a dining car on a railroad. Such a license shall authorize the holder thereof to sell beer and light wines at the place therein described for consumption only in said place. Except in the case of clubs and hotels, no beer or light wines shall be sold or served to a customer in any closed container. No license shall be issued to a club which has not been established for at least three months immediately prior to the making of the application for such license.

The annual fee for such a license shall be \$330 except that in the case of a marine vessel the fee shall be \$30 per month or \$330 per annum, and in the case of each railroad dining car or club car \$1.50 per month or \$15 per annum: Provided, that such a license may be issued to any company engaged in interstate commerce covering all dining, club, and lounge cars operated by such company on railroads within the District of Columbia upon the payment an annual fee of \$50.

* * * * *

(As amended Apr. 18, 1978, D.C. Law 2-73, § 3, 24 DCR 7066.)

Effect of Amendment.
1978 — Act April 18, 1978, D.C. Law 2-73, amended section by inserting the words “legitimate theater,” in the first sentence of subsection (g), by inserting the phrase “for a legitimate theater, \$425 per annum;” in the first

sentence of the second paragraph of subsection (g) and by inserting the words “legitimate theater,” in the first sentence of the first paragraph of subsection (h).
Legislative History of Law 2-73. See note to § 25-103.

§ 25-115. Applications for licenses — Qualification of applicants — Moral character — Citizenship — Prior convictions — Ownership — Interest of manufacturer in retail business — Character of premises — Advertising application — Hearing of protests — Objection of property owners — Removal of bonded liquor from Government warehouses — Penalty.

NOTES TO DECISIONS

Applicant had notice of criterion applied to determine appropriateness. — Where applicant for a license for a proposed combination gasoline station-liquor store knew that the creation of a “drink-and-drive” atmosphere would be one of the Board’s concerns and where testimony opposing the license on this ground was offered and received at the hearing, the applicant could not argue that it was without notice that a “drink-and-drive” criterion would be applied pursuant to the Board’s authority under this section to determine appropriateness based on the character of the premises. *Jameson’s Liquors, Inc. v. District of Columbia Alcoholic Beverage Control Bd.* (D.C. 1978, 384 A.2d 412).

But Board’s conclusion of inappropriateness not supported by proper evidence. — The Board’s conclusion that the close business relationship and physical proximity of a gas station and an adjacent liquor store and the existing customer identification of the gas station business with the structure housing the liquor business would create a “drink-and-drive” atmosphere rendering the character of the premises inappropriate for a retail liquor store was not supported by substantial, rationally connected evidence. *Jameson’s Liquors, Inc. v. District of Columbia Alcoholic Beverage Control Bd.* (D.C. 1978, 384 A.2d 412).

§ 25-121. Sale to minors or intoxicated persons — Liability of licensee.

NOTES TO DECISIONS

Intoxication and intoxicated appearance prerequisites to liability. — Liability could be imposed for serving alcoholic beverages to intoxicated person only if there was a showing not only that at the time the defendants provided the alcoholic beverages the person was intoxicated but also that at that time she appeared to be intoxicated to those serving the drinks. *Cartwright v. Hyatt Corp.* (1978, 460 F. Supp. 80).
Section not applicable to social hosts. — While this section imposes an obligation upon commercial vendors of liquor to refrain from providing alcoholic drinks in

circumstances indicating that a person is intoxicated and reasonably likely to cause harm to others, it has never been held to impose that duty upon social hosts. *Cartwright v. Hyatt Corp.* (1978, 460 F. Supp. 80).
General rule regarding liability of social hosts. — There is now no jurisdiction in the United States where, absent an explicit civil damage or “dram shop” law (and D.C. has no such act), a social host is held liable for having served liquor to an intoxicated adult who as a result causes harm to a third person. *Cartwright v. Hyatt Corp.* (1978, 460 F. Supp. 80).

§ 25-124. Beverage taxes — Method of collection — Class C or D licensees — Reports.

(a) There shall be levied, collected, and paid on all of the following-named beverages manufactured by a holder of a manufacturer’s license and on all of the said beverages imported or brought into the District by a holder of a wholesaler’s license, except beverages as may be sold to a dealer licensed under the laws of any State or Territory of the United States and not licensed under this chapter, and on all beverages imported or brought into the District by a holder of a retailer’s license, a tax at the following rates to be paid by the licensee in the manner hereinafter provided: (1) a tax of 15 cents on every wine-gallon of wine containing 14 per centum or less of alcohol by volume, other than champagne, sparkling wine, and any wine artificially carbonated, and a proportionate tax at a like rate on all fractional parts of such gallon; (2) a tax of 33 cents on every wine-gallon of wine containing more than 14 per centum of alcohol by volume, other than champagne, sparkling wine, and any wine artificially carbonated, and a proportionate tax at a like rate on all fractional parts of such gallon; (3) a tax of 45 cents on every wine-gallon of champagne, sparkling wine, and any wine artificially carbonated, and a proportionate tax at a like rate on all fractional parts of such gallon; (4) a tax of \$1.50 on every wine-gallon of spirits and a proportionate tax at a like rate on all fractional parts of such gallon;

(5) and a tax of \$1.50 on every wine-gallon of alcohol and a proportionate tax at a like rate on all fractional parts of such gallon.

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(As amended Apr. 18, 1978, D.C. Law 2-73, § 3, 24 DCR 7066.)

Effect of Amendment.
1978 — Act April 18, 1978, D.C. Law 2-73, amended section by striking “\$2.00” and replacing it with “\$1.50” wherever it appeared.

Legislative History of Law 2-73. See note to § 25-103.

§ 25-138. Tax on beer.

NOTES TO DECISIONS

Cited in *Jameson’s Liquors, Inc. v. District of Columbia Alcoholic Beverage Control Bd.* (D.C. 1978, 384 A.2d 412).

TITLE 26.—BANKS AND OTHER FINANCIAL INSTITUTIONS

Cross reference. For personal money order businesses, see § 47-3201 et seq.

Chap.	Sec.
2. Joint Accounts — Adverse Claimants — Trust Accounts	26-201

CHAPTER 2.—JOINT ACCOUNTS—ADVERSE CLAIMANTS—TRUST ACCOUNTS

§ 26-203. Notice of adverse claim to deposit.

NOTES TO DECISIONS

Section by its terms applies only to banks and trust companies, not to savings and loan associations. *Stevenson v. First Nat'l Bank* (D.C. 1978, 395 A.2d 21).
But savings and loan associations deserve same protection. — Like a bank or any other similar financial institution, a savings and loan association can find itself in the position of a stakeholder between adverse claimants, and it ought to enjoy the same protection from liability when seeking judicial resolution of that dispute. *Stevenson v. First Nat'l Bank* (D.C. 1978, 395 A.2d 21).

Financial institutions may freeze deposits subject to adverse claims. — When a savings and loan association, credit union or similar banking institution receives notice of an adverse claim to a deposit, said institution may freeze that deposit for a brief, reasonable period of time so as to permit the filing of litigation, either by interpleader or other appropriate civil litigation, to resolve the adverse claims. *Stevenson v. First Nat'l Bank* (D.C. 1978, 395 A.2d 21).

TITLE 28.—COMMERCIAL INSTRUMENTS AND
TRANSACTIONS

Cross reference. For personal money orders, see
§ 47-3201 et seq.

Subtitle	Sec.
I. Uniform Commercial Code	28:1-101
II. Other Commercial Transactions	28-2101

SUBTITLE I.—UNIFORM COMMERCIAL CODE

Article 1.—General Provisions

Part 1.—Short Title, Construction, Application
and Subject Matter

§ 28:1-103. Supplementary general principles of law applicable.
(As amended Mar. 16, 1978, D.C. Law 2-61, § 2, 24 DCR 6011.)

Effect of Amendment. Section 2 of act Mar. 16, 1978, D.C. Law 2-61, 24 DCR 6011, purported to amend section but did not. Amendment enumerated actually amended sections 12-302 and 29-921.	Legislative History of Law 2-61. See note to § 12-302.
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Part 2.—General Definitions and Principles of Interpretation

§ 28:1-203. Obligation of good faith.

NOTES TO DECISIONS

Cited in *R.A. Weaver & Assocs. v. Asphalt Constr., Inc.*
(1978, 587 F.2d 1315).

§ 28:1-205. Course of dealing and usage of trade.

NOTES TO DECISIONS

Standard Government contract clause qualified as usage of trade. — Existence and potential invocation of the standard “changes” clause in Government construction contracts qualified as a usage of trade. <i>R.A.</i> <i>Weaver & Assocs. v. Asphalt Constr., Inc.</i> (1978, 587 F.2d 1315). Party charged with knowledge of standard provisions in Government contract. — Where supplier had in fact	been party to an earlier contract to supply limestone for another Government project and thus had ample opportunity to gain exposure to the Government’s standard “changes” and “termination” provisions at least once prior to the transaction at issue, the court charged the supplier with knowledge of those provisions. <i>R.A.</i> <i>Weaver & Assocs. v. Asphalt Constr., Inc.</i> (1978, 587 F.2d 1315).
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Article 2.—Sales

Part 1.—Short Title, General Construction and Subject Matter

§ 28:2-104. Definitions: “merchant”; “between merchants”; “financing agency.”

NOTES TO DECISIONS

Consequences of distinction between merchants and ordinary buyers and sellers. — The analytical distinction between merchants and ordinary buyers and sellers legitimated the court's inquiry into the parties' levels of knowledge of a particular business environment relative to their contract. *R.A. Weaver & Assocs. v. Asphalt Constr., Inc.* (1978, 587 F.2d 1315).

Where supplier had in fact been party to an earlier contract to supply limestone for another Government

project and thus had ample opportunity to gain exposure to the Government's standard "changes" and "termination" provisions at least once prior to the transaction at issue, the court charged the supplier with knowledge of those provisions. *R.A. Weaver & Assocs. v. Asphalt Constr., Inc.* (1978, 587 F.2d 1315).

Part 2.—General Definitions and Principles of Interpretation

§ 28:1-201. General definitions.

NOTES TO DECISIONS

This section requires a quantity term in order for an agreement to be an enforceable contract. *R.A. Weaver & Assocs. v. Asphalt Constr., Inc.* (1978, 587 F.2d 1315).

Part 3.—General Obligation and Construction of Contract

§ 28:2-305. Open price term.

NOTES TO DECISIONS

Subsection (1) (c) applied where the price standard for aviation fuel was to be the posted prices for a particular grade of crude oil and, with the advent of government price controls, the subsequent existence of two classes of posted prices rendered the contract standard incapable of fixing a sale price. *North Cent. Airlines, Inc. v. Continental Oil Co.* (1978, 574 F.2d 582, 187 U.S. App. D.C. 371).

Factor for consideration in determining reasonable price. — In determining a reasonable price for aviation

fuel under this section, the district court was directed to consider the parties' intent to pass through some of the costs of the crude oil by increasing the price of the fuel in a definite relationship to any increase in the posted price of the crude oil. *North Cent. Airlines, Inc. v. Continental Oil Co.* (1978, 574 F.2d 582, 187 U.S. App. D.C. 371).

§ 28:2-306. Output, requirements and exclusive dealings.

NOTES TO DECISIONS

Subsection (1) does not preclude good faith reductions that are highly disproportionate to normal

prior requirements or stated estimates. *R.A. Weaver & Assocs. v. Asphalt Constr., Inc.* (1978, 587 F.2d 1315).

§ 28:2-314. Implied warranty: merchantability; usage of trade.

NOTES TO DECISIONS

Cited in *R.A. Weaver & Assocs. v. Asphalt Constr., Inc.* (1978, 587 F.2d 1315).

Part 4.—Title, Creditors and Good Faith Purchasers

§ 28:2-401. Passing of title; reservation for security; limited application of this section.

NOTES TO DECISIONS

Cited In *Locks v. United States* (D.C. 1978, 388 A.2d 873).

§ 28:2-403. Power to transfer; good faith purchase of goods; “entrusting.”

NOTES TO DECISIONS

Cited in *Locks v. United States* (D.C. 1978, 388 A.2d 873).

Article 9.—Secured Transactions; Sales of Accounts, Contract Rights and Chattel Paper

Part 1.—Short Title, Applicability and Definitions

§ 28:9-109. Classification of goods; “consumer goods”; “equipment”; “farm products”; “inventory.”

NOTES TO DECISIONS

Cited in *Franklin Inv. Co. v. Smith* (D.C. 1978, 383 A.2d 355).

Part 3.—Rights of Third Parties; Perfected and Unperfected Security Interests; Rules of Priority

§ 28:9-301. Persons who take priority over unperfected security interests; “lien creditor.”

NOTES TO DECISIONS

Cited in *In re Estate of Jacobson* (D.C. 1978, 387 A.2d 590).

Part 5.—Default

§ 28:9-504. Secured party’s right to dispose of collateral after default; effect of disposition.

NOTES TO DECISIONS

Cited in *Franklin Inv. Co. v. Smith* (D.C. 1978, 383 A.2d 355).

§ 28:9-507. Secured party’s liability for failure to comply with this part.

NOTES TO DECISIONS

Cited in *Franklin Inv. Co. v. Smith* (D.C. 1978, 383 A.2d 355).

SUBTITLE II.—OTHER COMMERCIAL TRANSACTIONS

Sec.
28-3818. Lay away plans.

CHAPTER 31.—FRAUDULENT CONVEYANCES

§ 28-3103. Fiduciary's suit to vacate fraudulent transaction.

NOTES TO DECISIONS

Cited in *Neves v. Riley* (1978, 447 F. Supp. 306).

CHAPTER 33.—INTEREST AND USURY

§ 28-3308. Finance charge on direct installment loans.

NOTES TO DECISIONS

Rebate requirement precluded characterizing full payment upon acceleration as "charge". — The rebate requirement of subsection (b) precluded characterizing a payment in full required upon acceleration of a debt as a "charge" within the meaning of 15 U.S.C. § 1638 (a) (9) and

Regulation Z, § 226.8 (b) (4), relating to consumer installment contract disclosure statements. *Price v. Franklin Inv. Co.* (1978, 574 F.2d 594, 187 U.S. App. D.C. 383).

CHAPTER 35.—STATUTE OF FRAUDS

§ 28-3503. Declaration, grant, and assignment of trust.

NOTES TO DECISIONS

There may be resulting trust of partial interest in property. *Edwards v. Woods* (D.C. 1978, 385 A.2d 780).

Resulting trust proper unless court could determine intended interests of parties furnishing consideration.

— Although the trial court's ruling that the defendant did not intend to give the plaintiff a beneficial interest in the entire property was not erroneous, the case was remanded for determination of the proportions of the parties' respective interests in the property based upon their intent or, if their intent could not be found, for recognition of a

resulting trust in plaintiff's favor in the same proportion as the amount of consideration furnished by him. *Edwards v. Woods* (D.C. 1978, 385 A.2d 780).

Evidence of parties' conduct after creation of resulting trust is admissible for whatever light it might shed on their intent at the time of the disputed transaction. *Haliday v. Haliday* (1926, 11 F.2d 565, 56 U.S. App. D.C. 179); *Edwards v. Woods* (D.C. 1978, 385 A.2d 780).

CHAPTER 38.—CONSUMER PROTECTIONS

§ 28-3818. Lay away plans.

(a) *Definitions.* — As used in this section the term:

(1) "consumer goods" means chattels owned, used or bought by an individual for personal, family or household purposes. The term consumer goods does not include goods acquired for commercial or business use or resale;

(2) "lay away plan" means a plan or agreement whereby a seller of consumer goods offers for sale or sells such goods to a buyer on terms which contemplate completion of three (3) or more agreed payments all of which must be made prior to the release or delivery of such goods.

(b) *Disclosures.* — The seller shall, prior to the time of executing a lay away plan agreement, provide the buyer with a copy of a written, clear and conspicuous disclosure. Failure of the seller to comply with this provision shall be deemed an executed trade practice in violation of the law of the District of Columbia for which the penalties in section 6 (i) (3) of the District of Columbia Consumer Protection Procedures Act, effective July 22, 1976 (D.C. Law 1-76) shall apply. The disclosure required by this subsection shall include:

- (1) a statement as to the schedule or period of payments to be made by the buyer towards the purchase of consumer goods under a lay away plan;
- (2) a statement that the consumer goods identified in the lay away plan will be retained in stock or set aside from stock but retained by the seller and made available for release or delivery to the buyer upon final payment or within fourteen (14) days after final payment.
- (3) a statement as to the refund and exchange policies and charges restrictive of the seller pursuant to subsections (c), (d), (f), (g) and (h) of this section to the extent applicable;
- (4) a statement as to the seller's right to deduct late charges as set forth in subsection (g) of this section; and
- (5) a statement that the buyer shall receive from the seller a written statement, upon request, and shall obtain a receipt for any and all payments made towards the purchase of consumer goods under a lay way plan as set forth in subsections (i) (1) and (i) (2) of this section.

(c) *Buyer's right to cancel.* — The buyer, at his option, has the right to cancel an executed lay away plan within two (2) weeks after entering into the lay away plan and to obtain a full refund of any amount of money paid toward the purchase of consumer goods under the lay away plan. Such refund is payable upon cancellation or within (2) two weeks after cancellation.

(d) *Cancellation fee.* — If a buyer notifies a seller of his intention to cancel a purchase of consumer goods under a lay away plan after the expiration of the two (2) week cancellation period set forth in subsection (c) of this section, the seller shall promptly refund the full amount of money paid by the buyer towards the purchase of the consumer goods under the lay away plan. The seller may, however, retain an amount not to exceed eight percent (8%) of the purchase price of the consumer goods purchased under the lay away plan or sixteen dollars (\$16.00), whichever is less.

(e) *Seller's default.* — If, for any reason, the seller is unable to provide the consumer goods identified in the lay away plan or their exact duplicate to the buyer upon final payment or within fourteen (14) days thereafter, the seller shall refund the entire amount paid by the buyer toward the purchase of such goods under the lay away plan plus eight percent (8%) of the purchase price of the consumer goods purchased under the lay away plan or sixteen dollars (\$16.00), whichever is less.

(f) *Charges restricted.* — The seller shall not require a buyer who has executed a lay away plan to pay a charge or fee of any kind on such goods except for those fees pursuant to subsections (d) and (g) of this section to the extent applicable.

(g) *Late fee.* — If, for any reason, the buyer is unable to make payment in accordance with the terms of a lay away plan, the seller shall send prompt notice informing the buyer of the delinquency in payment. If the seller does not receive payment on the consumer goods identified in the lay away plan within fourteen (14) days after such notice is sent to the buyer, the seller may deduct an amount not to exceed one dollar (\$1.00) from the full amount of money paid by the buyer towards the purchase of such goods under the lay away plan and refund the remaining amount to the buyer.

(h) *Acceleration of payment prohibited.* — The seller shall not accelerate any payments under a lay away plan. The seller shall be entitled to the amount of payments due to date under the lay away plan including those charges pursuant to subsections (d) and (g) of this section to the extent applicable.

(i) *Receipt and statement of payments.* — (1) The seller shall promptly provide the buyer with a receipt for any and all payments made toward the purchase of consumer goods under a lay away plan. If payment is made by mail or by any means other than in person, a receipt shall be provided no later than seven (7) days after a payment is made. Such receipt shall include:

- (A) a description of the consumer goods identified in the lay away plan; and
- (B) the amount and date of such payment.

(2) The seller, upon request of the buyer, shall provide the buyer, within a reasonable time thereafter, a written statement of any and all payments made toward the purchase of consumer goods under the lay away plan. Such statement shall include:

- (A) a description of the consumer goods identified in the lay away plan;
- (B) the amount and date of any and all payments made to date;
- (C) the total of all payments made to date; and
- (D) the balance of all payments remaining.

(Oct. 4, 1978, D.C. Law 2-115, § 2, 25 DCR 1997.)

Legislative History of Law 2-115. Law 2-115 was introduced in Council and assigned Bill No. 2-130, which was referred to the Committee on Public Services and Consumer Affair. The Bill was adopted on first and second readings on June 13, 1978 and June 27, 1978 respectively. Signed by the Mayor on July 24, 1978, it was assigned Act No. 2-241 and transmitted to both Houses of Congress for its review.

Emergency Act Amendment.
1978—For temporary amendment of section, see sec. 2 of the District of Columbia Consumer Lay Away Plan Service Charge Emergency Act of 1978 (D.C. Act 2-337, Dec. 29, 1978, 25 DCR 7033).
Section referred to in sections. Tit. 28, Appx. §§ 4, 5.

TITLE 28.—APPENDIX

Act	Sec.
District of Columbia Consumer Protection	
Procedures Act	1

DISTRICT OF COLUMBIA CONSUMER PROTECTION PROCEDURES ACT

- Sec.
- 4. Powers of the Office.
 - 5. Unlawful trade practices.

§ 4. Powers of the Office.

* * * * *

- (b) The Office shall:
- (1) perform the functions of the Mayor, Office of Consumer Affairs, Board of Consumer Goods Repairs Services or Department of Economic Development in:

* * * * *

- (C) the District of Columbia Consumer Goods Repair Regulation (Regulation 74-3); and
- (D) the District of Columbia Consumer Lay Away Plan Act (D.C. Code, sec. 28-3818);

* * * * *

(As amended Oct. 4, 1978, D.C. Law 2-115, § 3, 25 DCR 1997.)

Effect of Amendment.
1978—Act Oct. 4, 1978, D.C. Law 2-115, amended section by rewording paragraph (1) (C) and adding a new paragraph (1) (D) to subsection (b).

Legislative History of Law 2-115. See note to § 28-3818.

§ 5. Unlawful trade practices.

It shall be a violation of this act, whether or not any consumer is in fact misled, deceived or damaged thereby, for any person to:

* * * * *

- (x) sell consumer goods in a condition or manner not consistent with that warranted by operation of sections 28:2-312 through 318 of the District of Columbia Code, or by operation or requirement of federal law;

(y) violate any provision of the District of Columbia Consumer Lay Away Plan Act (D.C. Code, sec. 28-3818).

(As amended Oct. 4, 1978, D.C. Law 2-115, § 3, 25 DCR 1997.)

Effect of Amendment.

1978 — Act Oct. 4, 1978, D.C. Law 2-115, amended section by deleting the period at the end of subsection (x) and inserting in lieu thereof a semicolon and by adding a new subsection (y).

Legislative History of Law 2-115. See note to

§ 28-3818.

TITLE 29.—CORPORATIONS

Chap.	Sec.
9. Business Corporations (1954)	29-901
11. Professional Corporations	29-1101

CHAPTER 9.—BUSINESS CORPORATIONS (1954)

Sec.	Sec.
29-903. Purposes.	29-952. Reincorporation or incorporation of existing corporations.
29-921. Incorporators.	
29-927. Procedure for merger.	

§ 29-903. Purposes.

Corporations for profit may be organized under this chapter for any lawful purpose or purposes, except for the purpose of banking or life insurance or the acceptance and execution of trusts, the operation of railroads, or building and loan associations: Provided, that nothing contained in this chapter shall be construed to relieve any public-utility corporation incorporated or reincorporated under the provisions of this chapter from complying with all applicable provisions of the laws of the District of Columbia relating to such corporations. (June 8, 1954, 68 Stat. 180, ch. 269, § 3; Sept. 3, 1963, 77 Stat. 137, Pub. L. 88-111, § 1(5); Oct. 13, 1978, D.C. Law 2-117, § 2, 25 DCR 1509.)

Effect of Amendment.
1978 — Act Oct. 13, 1978, D.C. Law 2-117, amended section by striking out “except for the purpose of banking or insurance” and inserting in lieu thereof “except for the purpose of banking or life insurance.”
Emergency Act Amendments.
1978 — For temporary amendment of section, see sec. 2 of the District of Columbia Business Corporation Act Emergency Amendments of 1978 (D.C. Act 2-221, July 5, 1978, 25 DCR 1389); and sec. 2 of the Second District of Columbia Business Corporation Act Emergency

Amendments of 1978 (D.C. Acts 2-281, Oct. 16, 1978, 25 DCR 3502).
Legislative History of Law 2-117. Law 2-117 was introduced in Council and assigned Bill No. 2-216, which was referred to the Committee on Public Services and Consumer Affairs and to the Committee on Employment and Economic Development for comments. The Bill was adopted on first and second readings on June 27, 1978 and July 11, 1978, respectively. Signed by the Mayor on August 1, 1978, it was assigned Act No. 2-247 and transmitted to both Houses of Congress for its review.

§ 29-921. Incorporators.

Three or more natural persons of the age of eighteen years or more may act as incorporators of a corporation by signing, verifying, and filing in duplicate in the office of the Commissioner articles of incorporation for such corporation. (June 8, 1954, 68 Stat. 198, ch. 269, § 46; Mar. 16, 1978, D.C. Law 2-61, § 2, 24 DCR 6011.)

Effect of Amendment.
1978 — Act March 16, 1978, D.C. Law 2-61, amended section by striking “twenty-one” and inserting “eighteen” in lieu thereof.

Legislative History of Law 2-61. See note to § 12-302.

§ 29-927. Procedure for merger.

Any two or more domestic corporations may merge into one of such corporations in the following manner:

* * * * *

(c) The manner and basis of converting the shares of each corporation into shares, obligations, or other securities of the surviving corporation or of any other corporation or, in whole or in part, into cash or other property.

* * * * *

(As amended Oct. 13, 1978, D.C. Law 2-117, § 2, 25 DCR 1509.)

Effect of Amendment.
1978 — Act Oct. 13, 1978, D.C. Law 2-117, amended subsection (c) generally.
Emergency Act Amendments.
1978 — For temporary amendment of subsection (c), see sec. 2 of the District of Columbia Business Corporation Act

Emergency Amendments of 1978 (D.C. Act 2-221, July 5, 1978, 25 DCR 1389); and sec. 2 of the Second District of Columbia Business Corporation Act Emergency Amendments of 1978 (D.C. Act 2-281, Oct. 16, 1978, 25 DCR 3502).
Legislative History of Law 2-117. See note to § 29-903.

§ 29-933. Admission of foreign corporation — Exemption from certificate requirement in certain cases — Service of process on exempt corporations — Rules and regulations.

NOTES TO DECISIONS

Federal concessionaire subject to certification requirements. — The Secretary of the Interior’s exclusive control over the shuttle service between the Mall and the Stadium under 40 U.S.C. § 804 precluded application to a federal concessionaire of local District of Columbia laws

relating to vehicle registration and inspection and tour guide licensing but did not preclude application of local laws relating to certification of foreign corporations. *United States v. District of Columbia* (1977, 571 F.2d 651, 187 U.S. App. D.C. 217).

§ 29-933i. Service of process on foreign corporation.

NOTES TO DECISIONS

Cited in *Ramamurti v. Rolls-Royce, Ltd.* (1978, 454 F. Supp. 407).

§ 29-952. Reincorporation or incorporation of existing corporations.

I. REINCORPORATION

(a) Any corporation which is organized and existing under the laws of the District of Columbia on July 1, 1978, and which is organized for profit and for a purpose or purposes authorized by this chapter may avail itself of the provisions of this chapter and may become reincorporated hereunder in the following manner:

* * * * *

(As amended Oct. 13, 1978, D.C. Law 2-117, § 2, 25 DCR 1509.)

Effect of Amendment.
1978 — Act Oct. 13, 1978, D.C. Law 2-117, amended section by striking out “December 5, 1954” and inserting in lieu thereof “July 1, 1978.”
Emergency Act Amendments.
1978 — For temporary amendment of subsection (a), see sec. 2 of the District of Columbia Business Corporation Act

Emergency Amendments of 1978 (D.C. Act 2-211, July 5, 1978, 25 DCR 1389); and sec. 2 of the Second District of Columbia Business Corporation Act Emergency Amendments of 1978 (D.C. Act 2-281, Oct. 16, 1978, 25 DCR 3502).
Legislative History of Law 2-117. See note to § 29-903.

CHAPTER 11.—PROFESSIONAL CORPORATIONS

Cross reference. For certification and registration of accountants and accounting firms, see § 2-944 et seq.

TITLE 30.—DOMESTIC RELATIONS

Chap.	Sec.
3. Uniform Support	30-301

CHAPTER 3.—UNIFORM SUPPORT

§ 30-301. Purpose — Effective date.

NOTES TO DECISIONS

Cited in *Schlecht v. Schlecht* (D.C. 1978, 387 A.2d 575).

§ 30-302. Definitions.

NOTES TO DECISIONS

Duty of support incident to divorce proceeding. — Although a couple settled their joint property rights and obligations prior to receiving a divorce decree from a Colorado court, the duty of support imposed by that decree was incident to the divorce proceeding and hence enforceable under the Uniform Support Act. *Schlecht v. Schlecht* (D.C. 1978, 387 A.2d 575).

Enforcement of support and alimony order not based on prior judgment. — Although a Maryland court order for child support and alimony was not enforceable in this jurisdiction under the full faith and credit clause of the Constitution due to the potentiality under Maryland law

for modification or cancellation, it was enforceable under the Uniform Support Act, the basis of which is not a prior judgment but rather the duty to support. *Schlecht v. Schlecht* (D.C. 1978, 387 A.2d 575).

“Duty of support” does not encompass arrearages. — Although the 1968 Model Act for the Uniform Reciprocal Enforcement of Support Act expressly provides that a duty of support includes the duty to pay arrearages, the District of Columbia has never adopted this revision, and there is nothing in the definition of the “duty of support” encompassing arrearages. *Schlecht v. Schlecht* (D.C. 1978, 387 A.2d 575).

§ 30-303. Remedies additional to those now existing.

NOTES TO DECISIONS

Maryland order enforceable under Uniform Act but not under full faith and credit. — Although a Maryland court order for child support and alimony would not be enforceable in this jurisdiction under the full faith and credit clause of the Constitution due to the potentiality

under Maryland law for modification or cancellation, it was enforceable under the Uniform Support Act, the basis of which is not a prior judgment but rather the duty to support. *Schlecht v. Schlecht* (D.C. 1978, 387 A.2d 575).

§ 30-320. Support of illegitimate children.

NOTES TO DECISIONS

Duty to support distinct from right to visitation. — The duty to support, which is the underlying purpose for parentage proceedings and which arises automatically

upon establishment of parentage by sufficient proof, is distinct from the right to visitation. *Felder v. Allsopp* (D.C. 1978, 391 A.2d 243).

TITLE 31.—EDUCATION AND CULTURAL INSTITUTIONS

Chap.	Sec.
1. Board of Education	31-101
10. Gallaudet College	31-1001
11. Miscellaneous	31-1101
13. Educational Agency for Surplus Property	31-1301
15. Salaries of Teachers, School Officers and Other Employees	31-1501
17. Public Postsecondary Education Reorganization	31-1701
20. Educational Institution Licensure Commission	31-2001

CHAPTER 1.—BOARD OF EDUCATION

Sec.	Sec.
31-101. Election and number of members — Term of office — Commencement of term — Compensation of members — Qualifications — Forfeiture of office for	failure to maintain qualifications — Vacancies — President — Secretary — Meetings. 31-122. Adoption and use of seal.

§ 31-101. Election and number of members — Term of office — Commencement of term — Compensation of members — Qualifications — Forfeiture of office for failure to maintain qualifications — Vacancies — President — Secretary — Meetings.

* * * * *

(b) (1) Except as provided in paragraph (3) of this subsection and section 1-1110(e), the term of office of a member of the Board of Education shall be four years.

* * * * *

(3) The term of office of a member of the Board of Education elected at a general election shall begin at noon on the fourth Monday in January next following such election. A member may serve more than one term. However, the term of office of a member of the Board of Education elected in the general election for member of the Board of Education to be held in 1973 and thereafter shall expire at noon of the thirtieth day after the Board of Elections certifies the results of the election for members of the Board of Education in the fourth year of such member's term. The term of a member of the Board of Education elected in the general election to be held in 1977 and thereafter shall begin immediately upon the expiration of the term preceding it.

* * * * *

(As amended Aug. 18, 1978, D.C. Law 2-101, § 4, 25 DCR 257.)

Effect of Amendment.
1978 — Act Aug. 18, 1978, D.C. Law 2-101, amended section by striking “, including any runoff election,”.

Legislative History of Law 2-101. See note to § 1-1101.

NOTES TO DECISIONS

Terms of office are “staggered” to ensure smooth transitions in administration. *Barry v. District of Columbia Bd. of Elections & Ethics* (448 F. Supp. 1249, appeal dismissed for lack of standing, 1978, 580 F.2d 695, 188 U.S. App. D.C. 432).

§ 31-122. Adoption and use of seal.

The Board of Education of the District of Columbia is hereby authorized to adopt, alter and use a seal which shall be judicially noticed, and to prescribe rules and regulations as may be deemed necessary to implement this section. (Aug. 2, 1978, D.C. Law 2-96, § 2, 25 DCR 1772.)

Legislative History of Law 2-96. Law 2-96 was introduced in Council and assigned Bill No. 2-111, which was referred to the Committee on Education, Recreation and Youth Affairs. The Bill was adopted on first and second readings on April 18, 1978 and May 2, 1978, respectively. Signed by the Mayor on May 26, 1978, it was assigned Act No. 2-200 and transmitted to both Houses of Congress for its review.

CHAPTER 10.—GALLAUDET COLLEGE*Subchapter I.—Continuation and Administration***§ 31-1023. Purchase of supplies.**

Use of General Services Administration. Title 1, chapter V of act Sept. 8, 1978, Pub. L. 95-355, 92 Stat. 531, provided that Gallaudet College is authorized to make purchases through the General Services Administration.

CHAPTER 11.—MISCELLANEOUS

Sec.

31-1122. Official expenses.

§ 31-1122. Official expenses.

The Mayor of the District of Columbia, the Chairman and members of the Council of the District of Columbia, the Superintendent of Schools, and the Chief Executive Officer of the University of the District of Columbia are each hereby authorized to provide for the expenditure, within the limits of specified annual appropriation, of funds for appropriate purposes related to their official capacity as they may respectively deem necessary. Their determination thereof shall be final and conclusive, and their certificate shall be sufficient voucher for the expenditure of appropriations made pursuant to this section. (Oct. 26, 1973, Pub. L. 93-140, § 26, 87 Stat. 509; Sept. 23, 1978, D.C. Law 2-111, § 2, 25 DCR 1462.)

Effect of Amendment.

1978 — Act Sept. 23, 1978, D.C. Law 2-111, amended section by rewriting the first sentence.

Emergency Act of 1978 (D.C. Act 2-201, June 7, 1978, 25 DCR 390).

Legislative History of Law 2-111. See note to § 1-262a.

Emergency Act Amendment.

1978 — For temporary amendment of first sentence of section, see sec. 2 of the Official Purposes Funds

**CHAPTER 13.—EDUCATIONAL AGENCY FOR
SURPLUS PROPERTY****§ 31-1302. Working capital fund provided — Rules and regulations of Agency.****Emergency Act Amendments.**

1978 — For temporary amendment of section, see sec. 2 of the D.C. Surplus Property Emergency Authority Act of 1978 (D.C. Act 2-255, Aug. 8, 1978, 25 DCR 2215); and

sec. 2 of the Second District of Columbia Surplus Property Emergency Authority Act of 1978 (D.C. Act 2-284, Oct. 25, 1978, 25 DCR 4308).

**CHAPTER 15.—SALARIES OF TEACHERS, SCHOOL
OFFICERS AND OTHER EMPLOYEES***Subchapter I.—Salary Schedule*

Sec.

31-1501a. Annual comparability study of teachers salaries
— Recommendations.

Subchapter I.—Salary Schedule

§ 31-1501. Salaries of teachers, school officers and other employees — Service steps.

Increase in rates. Section 2 of act June 20, 1978, D.C. Law 2-80, 24 DCR 9050, provided: “(a)(1) The Mayor of the District of Columbia shall ascertain the average percentage to be used by the President of the United States in adjusting the rates of pay (to be effective October 1, 1977) under section 5305 (a) (2) of Title 5 of the United States Code, or whether the President of the United States intends to submit to the United States Congress an alternative plan with respect to pay adjustments under section 5305 (c) of Title 5 and the contents of the alternative plan of the President of the United States.

(2) The Mayor of the District of Columbia shall then adjust the rates of pay in each class and service step on the salary schedule in section 1 of the “District of Columbia Teachers’ Salary Act of 1955”, approved August 5, 1955 (69 Stat. 521; D.C. Code, sec. 31-1501) on the first pay period after October 1, 1977, to reflect the average percentage increase given to General Schedule employees, or if the alternative plan becomes effective as provided in section 5305 of Title 5 of the United States Code, the Mayor of the District of Columbia shall adjust the rates of pay to reflect the average percentage increase given to General Schedule employees under the alternative plan of the President of the United States. If the alternative plan of the President of the United States is disapproved by the United States Congress, the Mayor of the District of Columbia shall adjust such rates of pay to reflect the average percentage of the Presidential adjustments of rates of pay under section 5305 (m) of Title 5 of the United States Code.

(3) The adjustments in the rates of pay made by the Mayor of the District of Columbia under section (2) (a) (2) of this act shall be effective on and payable for the first day of the first pay period beginning on or after October 1, 1977, or the effective date of the alternative plan of the President of the United States, whichever is later.

(b) The rates of pay which become effective under this section shall be the rates of pay for each class and service step concerned as if those rates had been set by statute and shall remain in effect through September 30, 1978.

(c) The rates of pay that take effect under this section shall be published in the District of Columbia Register.”

Section 3 of said act provided: “(a) Retroactive compensation or salary shall be paid by reason of the amendments made by this act only in the case of an individual in the service of the Board of Education of the District of Columbia or of the United States (including service in the Armed Forces of the United States) on the

date of enactment of this act: Except, that such retroactive compensation or salary shall be paid:

(1) to any employee covered in this act who retired during the period beginning on the first day of the first pay period which began on or after October 1, 1977, and ending on the date of enactment of this act, for services rendered during such period; and

(2) in accordance with the provisions of subchapter VIII of chapter 55 of Title 5 of the United States Code (relating to settlement of accounts of deceased employees), for services rendered during the period beginning on the first pay period which began on or after October 1, 1977, and ending on the date of enactment of this act, by any such employee who dies during such period.

(b) For the purposes of this section, service in the Armed Forces of the United States in the case of an individual relieved from training and service in the Armed Forces of the United States or discharged from hospitalization following such training and service shall include the period provided by law for the mandatory restoration of such individual to a position in or under the government of the District of Columbia.

(c) For the purpose of determining the amount of insurance for which an individual is eligible under the provisions of chapter 87 of Title 5 of the United States Code (relating to government employees’ group life insurance), all changes in rates of compensation of salary which result from the enactment of this act shall be held and considered to be effective as of the date of enactment of this act.”

Section 5 of said act provided: “The process, authorized elsewhere in this act, whereby the salaries of District of Columbia teachers are adjusted in accordance with the rates of pay for federal General Schedule employees, shall be in effect only for the period commencing on October 1, 1977 and ending on September 30, 1978.”

Emergency Act Amendments.

1978 — For temporary adjustment of the rates of pay in the salary schedule, see secs. 101 and 201 of the D.C. Police, Firefighters and Teachers’ Salary Act Amendments Emergency Act of 1978 (D.C. Act 2-160, Mar. 15, 1978, 24 DCR 8080); secs. 2, 3 and 5 of the First Emergency District of Columbia Police, Firefighters’ and Teachers’ Salary Act Amendment of FY 1979 (D.C. Act 2-245, Aug. 1, 1978, 25 DCR 1499); and secs. 2, 3 and 5 of the Second Emergency District of Columbia Police, Firefighters’ and Teachers’ Salary Act Amendment of FY 1979 (D.C. Act 2-294, Nov. 1, 1978, 25 DCR 5085).

§ 31-1501a. Annual comparability study of teachers salaries — Recommendations.

(a) On or before March 1 of each year, the District of Columbia Board of Education shall submit to the Mayor of the District of Columbia:

(1) the percentage change in the Consumer Price Index for the Washington Metropolitan Area, as published by the Bureau of Labor Statistics, United States Department of Labor, since the effective date of the last adjustment in the salary schedule for educational personnel in the District of Columbia; and

(2) the results of a study comparing the level of compensation paid to educational personnel in the District of Columbia with the level of compensation paid to persons having comparable duties and responsibilities (i) in other jurisdictions in the Washington Metropolitan Area; (ii) in other cities of comparable size; and (iii) as employees of the United States and District of Columbia governments.

The study referred to in paragraph (2) of this subsection may include a comparison of other employment conditions not related to salaries, such as hours of work, health benefits, retirement benefits, sick leave, and annual leave.

(b) On or before June 30 of each year, the Mayor of the District of Columbia shall submit to the Council of the District of Columbia the information submitted to him by the Board of Education pursuant to subsection (a) of this section along with his recommendations concerning adjustments to the salary schedule for educational personnel in the District of Columbia. (Sept. 3, 1974, Pub. L. 93-407, title II, § 203, 88 Stat. 1049; June 20, 1978, D.C. Law 2-80, § 4, 24 DCR 9050.)

Effect of Amendment.
1978 — Act June 20, 1978, D.C. Law 2-80, amended section generally.
Legislative History of Law 2-80. Law 2-80 was introduced in Council and assigned Bill No. 2-253, which was referred to the Committee on Education, Recreation

and Youth Affairs. The Bill was adopted on first and second readings on March 7, 1978 and March 21, 1978, respectively. Signed by the Mayor on April 14, 1978, it was assigned Act No. 2-177 and transmitted to both Houses of Congress for its review.

CHAPTER 17.—PUBLIC POSTSECONDARY EDUCATION
REORGANIZATION

Subchapter III.—Authorizations

Sec.
31-1721. Appropriations.

Subchapter II.—University of the District of Columbia

§ 31-1717. Personnel system.

Emergency Act Amendment.
1978 — For temporary amendment adding subsection (f), see sec. 2 of the University of the District of Columbia

Emergency Personnel Act (D.C. Act 2-144, Feb. 3, 1978, 24 DCR 6865).

Subchapter III.—Authorizations

§ 31-1721. Appropriations.

* * * * *

(b) **Repealed.** Sept. 23, 1978, D.C. Law 2-111, § 3, 25 DCR 1462.
(As amended Sept. 23, 1978, D.C. Law 2-111, § 3, 25 DCR 1462.)

Effect of Amendment.
1978 — Act Sept. 23, 1978, D.C. Law 2-111, amended section by repealing subsection (b).
Emergency Act Amendment.
1978 — For temporary repeal of subsection (b), see sec.

3 of the Official Purposes Funds Emergency Act of 1978 (D.C. Act 2-201, June 7, 1978, 25 DCR 390).
Legislative History of Law 2-111. See note to § 1-262a.

CHAPTER 20.—EDUCATIONAL INSTITUTION
LICENSURE COMMISSION

§ 31-2003. Establishment of Commission.

Emergency Act Amendments.
1978 — For temporary amendment of section, see sec. 2 of the District of Columbia Emergency Educational Institution License Extension Act of 1978 (D.C. Act 2-175, April 13, 1978, 24 DCR 9291); sec. 2 of the District of Columbia Second Emergency Educational Institution License Extension Act of 1978 (D.C. 2-238, July 17, 1978,

25 DCR 1478); sec. 2 of the District of Columbia Emergency Educational Institution Licensure Regulations Act of 1978 (D.C. Act 2-271, Aug. 21, 1978, 25 DCR 2541); and sec. 2 of the District of Columbia Emergency Educational Institution Licensure Regulations Extension Act of 1978 (D.C. Act 2-295, Oct. 17, 1978, 25 DCR 5090).

TITLE 32.—ELEEMOSYNARY, CURATIVE, CORRECTIONAL,
AND PENAL INSTITUTIONS

Cross references. For Criminal Justice Advisory Board, see § 2-2501 et seq. For smoke detectors, see § 5-328 et seq.

Chap.	Sec.
3. Hospitals and Asylums — General Provisions	32-301
3A. Certificate of Need Program	32-341
3B. Medical Records	32-361
13. D.C. General Hospital Commission	32-1301

CHAPTER 3.—HOSPITALS AND ASYLUMS—GENERAL PROVISIONS

§ 32-304. District of Columbia Council to make regulations.

New implementing regulations. Pursuant to this section the “D.C. Ambulatory Surgical Treatment Center Licensure Act” (Apr. 6, 1978, D.C. Law 2-66, 24 DCR 6836) was adopted. These regulations are scheduled to be published by the Mayor in a compilation of all current District of Columbia municipal regulations.

CHAPTER 3A.—CERTIFICATE OF NEED PROGRAM

Sec.	Sec.
32-341. Purpose.	32-349. Administrative appeal.
32-342. Definitions.	32-350. Judicial review of certificate of need.
32-343. Certificate of need requirement.	32-351. Certificate of need mandatory condition precedent.
32-344. Adoption of procedures and criteria by the State Agency governing applications and review.	32-352. Penalties for non-compliance with chapter.
32-345. Reconsideration procedures.	32-353. Immunity from legal liability.
32-346. Criteria for review.	32-354. Moratorium on applications.
32-347. Emergency issuance of certificate of need.	32-355. Severability clause.
32-348. Duration, modification, sale or transfer of a certificate of need.	

§ 32-341. Purpose.

It is the purpose of this chapter to promote effective and equitable health planning and regulation of new institutional health services proposed to be offered or developed within the District of Columbia. (Feb. 28, 1978, D.C. Law 2-43, § 2, 24 DCR 3727.)

Legislative History of Law 2-43. Law 2-43 was introduced in Council and assigned Bill No. 2-54, which was referred to the Committee on Human Resources and the Aging. The Bill was adopted on first and second readings on July 26, 1977 and September 13, 1977 respectively. Signed by the Mayor on November 4, 1977, it was assigned Act No. 2-100 and transmitted to both Houses of Congress for its review.

Short title. The first section of act Feb. 28, 1978, D.C. Law 2-43, provided “That this act may be cited as the ‘District of Columbia Certificate of Need Act of 1977.’ ”

§ 32-342. Definitions.

Except as otherwise indicated in a particular section, the following terms have the following meanings:

- (a) The term “ambulatory surgical treatment facility” means any institution, place or building, not part of a hospital, devoted primarily to the maintenance and operation of facilities for the performance of surgical procedures on an outpatient basis.
- (b) The term “Annual Implementation Plan” means the plan established by the State Agency to describe the objectives which will achieve the goals of the Health Systems Plan and priorities among the objectives reviewed by the Statewide Health Coordinating Council pursuant to section 1513 (b) (3) of P.L. 93-641.

(c) The term “consumer” means an individual who does not hold any of the interests, positions, or characteristics of a direct or indirect provider of health care.

(d) The term “Corporation Counsel” means the Corporation Counsel of the District of Columbia government or his or her designated agent.

(e) The term “to develop”, when used in connection with health services, means to undertake those activities which on their completion will result in the offer of a new health service or the incurring of a financial obligation in excess of one hundred and fifty thousand dollars (\$150,000) in relation to the offering of such a service.

(f) The term “diagnostic health care facility” means a facility, not operated by a hospital, which provides diagnostic services to patients not requiring hospitalization. The term does not include the offices of private physicians or dentists, whether for individual or group practice, but does include diagnostic equipment for those offices costing more than one hundred and fifty thousand dollars (\$150,000).

(g) The term “District” means the District of Columbia.

(h) The term “general hospital” has the meaning ascribed to that term in section 104 of Chapter 4 of Title 8 of the District of Columbia Health Regulations.

(i) The term “health care facility” means a general hospital, psychiatric hospital, other specialty hospital, skilled nursing facility, kidney disease treatment center (including freestanding hemodialysis unit), intermediate care facility, ambulatory surgical treatment facility, and a diagnostic health care facility, but does not include Christian Science sanatoriums operated, or listed and certified by the First Church of Christ Scientist, Boston, Massachusetts, or those private office facilities for the private practice of a physician, dentist, or other health care professional, except as related to capital expenditures in excess of one hundred and fifty thousand dollars (\$150,000) as provided in subsections (p) (1) and (p) (2) of this section.

(j) The term “health maintenance organization” means a public or private organization which:

(1) provides or otherwise makes available to enrolled participants health care services, including at least the following basic health care services: usual physicians’ services; hospitalization; laboratory, X-ray, emergency and preventive services; and out-of-area coverage;

(2) is compensated (except for co-payments) for the provision of the basic health care services listed in subsection (a) of this section to enrolled participants on a predetermined periodic rate basis; and

(3) provides physicians’ services primarily:

(A) directly through physicians who are either employees or partners of such organization, or

(B) through arrangements with individual physicians or one or more groups of physicians (organized on a group practice or individual practice basis).

(k) The term “health services” means clinically related (i.e., diagnostic, curative or rehabilitative) services, and includes alcohol, drug abuse, mental health, and home health care services.

(l) The term “Health Systems Agency” means a conditionally or fully designated health systems agency designated pursuant to section 1515 of P.L. 93-641.

(m) The term “intermediate care facility” has the meaning ascribed to that term in section 3 of Title I of the “Health Care Facilities Regulation”, enacted June 14, 1974 (Reg. No. 74-15);

(n) The term “kidney disease treatment center” means a facility, not operated by a hospital, which is primarily engaged in the provision of diagnostic and treatment services, by or under the supervision of a physician, to persons suffering from kidney disease.

(o) The term “Mayor” means the holder of the Office of the Mayor of the District of Columbia pursuant to section 1-161 or the Mayor’s designated agent.

(p) The term “new institutional health services” shall include:

(1) the construction, development, or other establishment of a new health care facility or health maintenance organization;

(2) any expenditure in excess of one hundred and fifty thousand dollars (\$150,000) by any

person engaged in the provision of health services which affects the unit cost of or charge for the provision of any health service or affects the amount of utilization of any health service, and which, under generally accepted accounting principles consistently applied, is a capital expenditure. If a person makes an acquisition under a lease or a comparable arrangement, or through a donation, which would have required a review if the acquisition had been by purchase, the acquisition shall be deemed a capital expenditure subject to review;

(3) a change in the bed capacity of a health care facility or health maintenance organization which increases the total number of beds, or distributes beds among various categories, or relocates such beds from one physical facility or site to another;

(4) health services which are offered in or through a health care facility or health maintenance organization and which were not offered on a regular basis in or through such health care facility or health maintenance organization within the twelve (12) month period prior to the time such services would be offered.

(q) The term “to offer”, when used in connection with health services, means that the health care facility or health maintenance organization holds itself out as capable of providing, or as having the means for the provision of, specified health services.

(r) The term “other specialty hospital” means an institution primarily engaged in providing to inpatients diagnosis and treatment for the limited category of illness(es) for which the institution is or will seek to be licensed. The term does not include a psychiatric hospital.

(s) The term “person” means an individual, a trust or estate, a partnership, a corporation (including associations, joint stock companies and insurance companies), the District government, or a political subdivision or instrumentality (including a municipal corporation) of the District government.

(t) The term “psychiatric hospital” means an institution which is primarily engaged in providing to inpatients, by or under the supervision of a physician, psychiatric services for the diagnosis and treatment of mentally ill persons.

(u) The term “P.L. 93-641” means the “National Health Planning and Resources Development Act of 1974”, approved January 4, 1975 (88 Stat. 2225), and any successor legislation.

(v) The term “skilled care facility” has the meaning ascribed to that term in section 3 of Title I of the “Health Care Facilities Regulation”, enacted June 14, 1974 (Reg. No. 74-15).

(w) The term “State Agency” means the agency of the District government selected by the Mayor and designated in an agreement entered into pursuant to section 1521 of P.L. 93-641 to carry out the District’s health planning and development program.

(x) The term “Statewide Health Coordinating Council” or “SHCC” means the body established pursuant to section 1524 of P.L. 93-641 to advise the State Agency.

(y) The term “State Health Plan” means that Health Systems Plan prepared by the State Agency and reviewed by the SHCC in accordance with sections 1513 (b) (2), 1523 (a) (2) and 1524 (c) (2) of P.L. 93-641. For the purposes of this subsection, the term “Health Systems Plan” means a detailed statement of goals (1) describing a healthful environment and health systems in the District which, when developed, will assure that quality health services will be available and accessible in a manner which assures continuity of care at a reasonable cost for all residents of the District; (2) which are responsive to the unique needs and resources of the District; and (3) which take into account and are consistent with the national guidelines for health planning policy, in the areas of supply, distribution and organization of health resources and services, issued by the Secretary of Health, Education and Welfare under section 1501 of P.L. 93-641.

(z) The term “State Medical Facilities Plan” means that plan prepared by the State Agency, reviewed and approved by the SHCC and submitted to the Secretary of Health, Education and Welfare for his or her approval in accordance with sections 1602 and 1603 of P.L. 93-641. (Feb. 28, 1978, D.C. Law 2-43, § 3, 24 DCR 3727.)

§ 32-343. Certificate of need requirement.

All persons proposing to offer or develop a new institutional health service in the District shall, prior to proceeding with that offering or development, obtain from the State Agency a certificate of need indicating that there exists a public need for such new service. No expenditures in excess of one hundred and fifty thousand dollars (\$150,000) in preparation for this offering or development of a new institutional health service shall be made by any person unless a certificate of need for such service has been granted: Provided, that nothing in this section shall preclude the District government from granting a certificate of need which permits expenditures only for predevelopment activities such as surveys, studies and plans, but does not authorize the offering or development of the new institutional health service with respect to which such predevelopment activities are proposed. Expenditures in preparation for the offering or development of a new institutional health service shall include expenditures for studies, surveys, designs, plans, working drawings, specifications and site acquisition which are essential to the offering or development of the service. (Feb. 28, 1978, D.C. Law 2-43, § 4, 24 DCR 3727.)

Legislative History of Law 2-43. See note to § 32-341.

Section referred to in sections. 32-344, 32-352.

§ 32-344. Adoption of procedures and criteria by the State Agency governing applications and review.

(a) All applications for a certificate of need issued under section 32-343 shall be reviewed by the State Agency. In order to carry out this function the State Agency shall adopt and revise as necessary review procedures consistent with subsection (f) of this section and criteria consistent with section 32-346. Such procedures and criteria shall be adopted prior to the review by the State Agency of new institutional health services and not later than three (3) months after the effective date of this chapter.

(b) Before adopting the review procedures and criteria required by this section or any revisions of such procedures and criteria, the State Agency shall hold a public hearing and give interested persons an opportunity to offer written comments on the procedures and criteria, or any revisions thereof, which it proposes to adopt.

(c) The State Agency shall distribute copies of its proposed review procedures and criteria, and proposed revisions thereof, to District health agencies and organizations in the District, the Statewide Health Coordinating Council, Health Systems Agencies and State Agencies in contiguous jurisdictions.

(d) The State Agency shall publish, in at least two (2) newspapers of general circulation in the District, a notice stating that review procedures and criteria or a revision thereof has been proposed for adoption and is available at specified addresses for inspection and copying by interested persons and stating the time and place of the hearing. The notice shall appear in other than the legal notices or classified advertisement sections of such newspapers.

(e) The State Agency shall distribute copies of its adopted review procedures and criteria and any revision thereof, within thirty (30) days of adoption, to the agencies and organizations specified in subsection (c) of this section, and shall provide copies to other persons upon request.

(f) The State Agency shall include in the procedures at least the following:

(1) A requirement that persons contemplating projects for new health institutional services which may require a certificate of need issued under section 32-343 shall at the earliest possible time in the course of their own planning submit to the State Agency a letter of intent in such detail as may be necessary to inform the State Agency of the scope and nature of the project. The letter of intent shall be submitted no later than sixty (60) days prior to filing the application for a certificate of need, unless permission to reduce such time is allowed for good cause shown. The State Agency may utilize the period of time prior to receiving a formal application for a certificate of need to answer inquiries concerning the requirements for a certificate of need and other reviews, to advise the applicant on appropriate joint planning with other health care institutional facilities and affected parties, and to advise on the involvement of other community

and public agencies, providers and consumers in the long and short range planning of the applicant.

(2) An application for a certificate of need shall be in writing and on such forms and containing such information as the State Agency shall require. Upon receipt of the application, the State Agency has fifteen (15) days within which to determine whether the application is complete and in which to request further information from the applicant. If further information is requested, the State Agency shall notify the applicant when it is satisfied that the application is complete, but in no case in more than fifteen (15) days after the receipt of such information. The date the application is established as complete marks the beginning of the review period.

(3) Written notification of the beginning of the review period shall be sent to affected persons by mail within five (5) days of the beginning of the review period and shall also be published in the District of Columbia Register. For the purposes of this section, "affected person" includes, at a minimum, the person whose proposal is being reviewed, health care facilities and health maintenance organizations located in the District which provide institutional health services, health systems agencies serving health systems in contiguous jurisdictions areas, any agency which establishes rates for health care facilities or health maintenance organizations in the District, the State Health Coordinating Council, and members of the public who are to be served by the proposed new institutional health services. In the case of members of the public, the written notification requirement can be met by publication of the notice in at least one (1) newspaper of general circulation in the District.

(4) State Agency review shall take no longer than ninety (90) days from the beginning of the review period. When no decision is made within that time, the application shall be considered denied.

(5) The State Agency shall afford an opportunity for a public hearing to any affected person, if so requested in writing not later than fourteen (14) days after the postmark on the notice to that person of the beginning of the review period. A record of the hearing shall be made by the State Agency. Any party may request that a verbatim record be made, but may be required to pay the expense of recording and producing such verbatim record.

(6) The general public shall have access to all applications reviewed by the State Agency and all other written materials pertinent to the State Agency's review.

(7) All State Agency meetings shall be open to the public.

(8) The decision shall be in writing and shall contain findings and conclusions related to the criteria for review of such application. The recommendations of the State Health Coordinating Council shall be included in the decision document. Where the State Agency's decision is not in agreement with the recommendations of the SHCC, the State Agency shall provide a written justification for its disagreement.

(9) The State Agency may attach conditions to the approval of a certificate of need, as long as the conditions relate directly to the review criteria established under this section or federal regulations issued under P.L. 93-641.

(10) The State Agency shall forward to the SHCC a copy of any completed application for a certificate of need. The SHCC shall have up to sixty (60) days to review and comment on the application. During this period, the SHCC may hold a public hearing on the application if it deems appropriate. The failure of the SHCC to submit its recommendations shall not delay the State Agency from performing its review.

(Feb. 28, 1978, D.C. Law 2-43, § 5, 24 DCR 3727.)

Legislative History of Law 2-43. See note to § 32-341.

Section referred to in sections. 32-346, 32-349.

§ 32-345. Reconsideration procedures.

(a) After a decision on an application for a certificate of need is made by the State Agency but before the issuance or denial of the certificate of need, the State Agency shall notify the applicant and all previously appearing parties and contiguous Health Systems Agencies and State Agencies of the decision. Either of them or any other person, for good cause shown, shall

be given the opportunity within thirty (30) days to request reconsideration of the decision at a public hearing before the State Agency. If such a public hearing is requested, it shall be held within thirty (30) days of the request for a reconsideration of the decision. The person requesting the hearing and any other person may submit testimony at the hearing orally or in writing. However, the State Agency may limit the scope of the hearing so that no new evidence is adduced except as to subsequent occurrences or data not available earlier. A record of the public hearing shall be made by the State Agency. The applicant or any party may request a verbatim record, but may be required to pay the expense of recording and producing the verbatim record.

(b) For the purposes of subsection (a) of this section there shall be deemed to be “good cause shown” if the request for a public hearing:

(1) presents significant, relevant information not previously considered by the State Agency; or

(2) demonstrates that there have been significant changes in factors or circumstances relied upon by the State Agency in reaching its decision; or

(3) demonstrates that the State Agency has materially failed to follow its adopted procedures in reaching its decision.

(c) The State Agency may affirm, modify or reverse its decision, making such amendments or changes in the findings and conclusions as are appropriate and rendering its final decision within fourteen (14) days of the conclusion of the public hearing and, unless an appeal of such decision is made in accordance with the provisions of section 32-349 or section 32-350, the certificate of need shall be issued or denied forthwith. (Feb. 28, 1978, D.C. Law 2-43, § 6, 24 DCR 3727.)

Legislative History of Law 2-43. See note to § 32-341.

§ 32-346. Criteria for review.

(a) *Required findings upon review.* — The State Agency shall adopt in a manner consistent with section 32-344 specific criteria for conducting the review of an application for a certificate of need, which criteria shall include a written finding of at least the following:

(1) that the proposal conforms to the applicable Annual Implementation Plan, State Health Plan, and State Medical Facilities Plan;

(2) that any facility proposing a new institutional health service, which gave assurances pursuant to section 603 (e) or section 1602 (5) of the “Public Health Service Act”, approved July 1, 1944 (58 Stat. 682) that its facilities would be made available to all persons residing in its area and that a reasonable volume of services would be made available to persons unable to pay therefor, is currently in compliance with such assurances;

(3) that less costly, more efficient or more appropriate alternative means of providing the services, including sharing arrangements, are not available and the development of such alternatives has been studied and found not practicable;

(4) that existing services similar to those proposed are being used in an appropriate and efficient manner; and

(5) that patients will experience serious problems in terms of cost, availability or accessibility in obtaining services of the type proposed in the absence of the proposed new service.

(b) *Considerations upon review.* — The State Agency shall adopt criteria, in addition to those listed in subsection (a) of this section, for the review of an application for a certificate of need. The criteria shall require the consideration of at least the following:

(1) the relationship of the service being reviewed to the long-range development plan, if any, of the person providing or proposing the service;

(2) the need of the population served or to be served for the services being reviewed;

(3) the immediate and long-term financial feasibility of the proposal;

(4) the availability or the potential availability of resources (including health manpower, management personnel, and funds for capital and operating needs) for the provision of the

service proposed to be provided and the availability of alternative uses of such resources for the provision of other health services;

(5) the relationship, including the organization relationship, of the health services proposed to be provided to ancillary or support services;

(6) the special needs and circumstances of those entities which provide a substantial part of their services or resources or both to individuals not residing in the District or which serve special populations within the metropolitan area. Such institutions may include medical and other health professional schools, multidisciplinary clinics and specialty centers;

(7) the special needs and circumstances of health maintenance organizations and other comprehensive health care programs;

(8) the special needs and circumstances of biomedical and behavioral research projects which are designed to meet a national need and for which local conditions offer special advantages;

(9) in the case of a construction project, the costs and methods of the proposed construction, including the costs and methods of energy provision and the probable impact of the project reviewed on the costs of providing health services by the applicant.

(c) *Inpatient facilities — Other criteria for review.* — The criteria adopted for a review in accordance with paragraphs (a) and (b) of this section may vary according to the type of service being reviewed if the State Agency has previously promulgated and adopted standards for such a procedure: Provided, that the following findings will be required with respect to inpatient facilities:

(1) that less costly, more efficient or more appropriate alternatives to such inpatient services are not available and the development of such alternatives has been studied and found not practicable;

(2) that existing inpatient facilities providing inpatient services similar to those proposed are being used in an appropriate and efficient manner;

(3) that in the case of new construction, alternatives to new construction (e.g., modernization or sharing arrangements) have been considered and if found to be economically feasible have been implemented to the maximum extent possible;

(4) that patients will experience serious problems in obtaining inpatient care of the type proposed in the absence of the proposed new service; and

(5) that in the case of a proposal for the addition of beds for the provision of skilled nursing or intermediate care services, the addition will be consistent with the plans of other agencies of the District responsible for the provision and financing of long-term care (including home health) services.

(Feb. 28, 1978, D.C. Law 2-43, § 7, 24 DCR 3727.)

Legislative History of Law 2-43. See note to § 32-341.

Section referred to in section. 32-344.

§ 32-347. Emergency issuance of certificate of need.

Notwithstanding any other provision of this chapter, if the need for an emergency replacement occurs, the certificate of need application process may be suspended and an emergency certificate of need issued forthwith. Emergency replacement means the replacement of facilities or equipment whose lack poses an immediate threat to the health or safety of the patients who would be served. (Feb. 28, 1978, D.C. Law 2-43, § 8, 24 DCR 3727).

Legislative History of Law 2-43. See note to § 32-341.

§ 32-348. Duration, modification, sale or transfer of a certificate of need.

(a) The State Agency shall issue a certificate of need valid for one (1) year, renewable for additional one (1) year periods after a showing of substantial progress or a justification for the lack of progress. The State Agency shall adopt regulations to define the schedule of

performance, including reporting thereof, criteria for evaluating compliance or non-compliance to the schedule and criteria for determining major modifications after a certificate of need has been issued.

(b) A certificate of need obtained prior to the effective date of this chapter shall be valid for one (1) year from the effective date of this chapter or the period specified in granting the certificate, whichever is shorter, and shall be renewed only after review in accordance with the regulations adopted pursuant to subsection (a) of this section.

(c) A certificate of need may not be sold or transferred. (Feb. 28, 1978, D.C. Law 2-43, § 9, 24 DCR 3727.)

Legislative History of Law 2-43. See note to § 32-341.

§ 32-349. Administrative appeal.

The decision of the State Agency on an application for a certificate of need and the record upon which such decision was made (for good cause shown and upon a written request of the SHCC, the applicant, or an affected person as defined in section 32-344(f)(3)) may be appealed to the Board of Appeals and Review established under Org. Order No. 112, dated August 11, 1955. (Feb. 28, 1978, D.C. Law 2-43, § 10, 24 DCR 3727.)

Legislative History of Law 2-43. See note to § 32-341.

Section referred to in section. 32-345.

§ 32-350. Judicial review of certificate of need.

The final decision upon an application for a certificate of need under this chapter, after the exhaustion of all administrative remedies, shall be subject to judicial review by the District of Columbia Court of Appeals pursuant to the "District of Columbia Administrative Procedure Act", (D.C. Code, sec. 1-1501 et seq.). (Feb. 28, 1978, D.C. Law 2-43, § 11, 24 DCR 3727.)

Legislative History of Law 2-43. See note to § 32-341.

Section referred to in section. 32-345.

§ 32-351. Certificate of need mandatory condition precedent.

The issuance of a certificate of need, if required under this chapter, shall be a condition precedent to the issuance of any license, permit, zoning approval or any other type of official approval by an agency or officer or employee of the District government which is, in addition, necessary for the project. This condition precedent shall be mandatory and any license, permit, certificate of occupancy, zoning approval, or any other expression of approval obtained or issued in contravention of this section or chapter shall be void. (Feb. 28, 1978, D.C. Law 2-43, § 12, 24 DCR 3727.)

Legislative History of Law 2-43. See note to § 32-341.

§ 32-352. Penalties for non-compliance with chapter.

(a) It shall be unlawful for any person to proceed with any project which under this chapter would require a certificate of need without first acquiring a certificate of need.

(b) The Corporation Counsel may seek injunctive relief from a court of competent jurisdiction when he or she finds that a person is offering, developing or operating a service in violation of section 32-343.

(c) Any person violating this chapter by willful failure to obtain a certificate of need, willfully deviating from the provisions of a certificate of need, or beginning construction or providing services after the expiration of a certificate of need shall be subject to a criminal penalty of not less than one hundred dollars (\$100.00) and not more than two thousand and five hundred dollars (\$2,500.00). Each day of continuing violation shall constitute a separate offense. (Feb. 28, 1978, D.C. Law 2-43, § 13, 24 DCR 3727.)

Legislative History of Law 2-43. See note to § 32-341.

§ 32-353. Immunity from legal liability.

Any person, whether an employee or not, who, as a member of any board, governing body, committee or other part of any agency established or designated as a State Agency under this chapter who performs duties or activities in good faith in implementing this chapter on behalf of that agency and without malice toward any persons affected by that duty or activity shall be immune from any liability on account of that duty or activity for the payment of any form of damages or criminal penalty under the law of the District. (Feb. 28, 1978, D.C. Law 2-43, § 14, 24 DCR 3727.)

Legislative History of Law 2-43. See note to § 32-341.

§ 32-354. Moratorium on applications.

The State Agency may impose a moratorium for a defined period of time (not to exceed one hundred and twenty (120) days) on consideration of applications for certain kinds of services if:

- (a) the State Agency needs additional time to develop appropriate criteria to assess the need for a new service; or
- (b) the current State Health Plan finds the existing capacity to provide a certain service or services is adequate or excessive.

(Feb. 28, 1978, D.C. Law 2-43, § 15, 24 DCR 3727.)

Legislative History of Law 2-43. See note to § 32-341.

§ 32-355. Severability clause.

If any provision of this chapter is held invalid for any reason the invalidity shall not affect the other provisions which can be given effect without the invalid provisions and to this end all the provisions of this chapter are declared severable. (Feb. 28, 1978, D.C. Law 2-43, § 16, 24 DCR 3727.)

Legislative History of Law 2-43. See note to § 32-341.

CHAPTER 3B.—MEDICAL RECORDS

Sec.	Sec.
32-361. Definitions.	32-364. Confidentiality of identity in publications.
32-362. Authority to transmit data, etc., to committees.	32-365. Use of committee reports, etc., in judicial and administrative proceedings.
32-363. Liability of committee members for actions taken.	

§ 32-361. Definitions.

For the purposes of this chapter:

- (a) The term “extended care facility” means a residential facility providing medical services consistent with accepted professional, therapeutic and medical care concepts and practices as well as current health programs and legislation. The term shall include and refer to the following levels of care:
 - (1) skilled care facilities, that is, facilities or distinct parts thereof primarily engaged in providing to in-patients continuous professional nursing coverage and health related services under the direct supervision of physicians. Skilled care facilities are solely limited to those

facilities which provide twenty-four (24) hour professional nursing services and a complete program of health related and rehabilitative services under the direct supervision of a full-time medical director or principal physicians; and

(2) intermediate nursing care facilities, that is, facilities or distinct parts thereof primarily engaged in providing professional nursing services provided under the direction of a physician to individuals who do not have such an illness, disease, injury or other condition as to require the degree of care and treatment which a hospital or skilled nursing facility is designed to provide. Services include both regular and continuous health related services.

(b) The term “medical staff committee” means a peer review committee of a hospital or extended care facility.

(c) The term “medical utilization review committee” means any committee of a hospital or extended care facility which reviews, on a sample or other basis, admissions to such hospital or facility, the duration of stays therein and the professional services furnished: (1) with respect to the medical necessity of the services; and (2) for the purpose of promoting the most efficient use of the services and facilities available in the hospital or extended care facility.

(d) The term “peer review committee” means any committee of a professional medical society or psychological association composed of persons engaged in the practice of medicine or psychology in the District of Columbia which reviews or receives and hears complaints with respect to the quality of medical or psychological services furnished by a person engaged in the practice of medicine or psychology in the District of Columbia.

(e) The term “primary health record” means the record of continuing care kept by a physician, psychologist, hospital or extended care facility regarding a patient which reflects the diagnostic and therapeutic services rendered by the physician, psychologist, hospital or extended care facility to the patient.

(f) The term “tissue review committee” means any committee of a hospital or extended care facility which conducts a continuous review of the results of surgical operations with respect to the removal of tissue or blood from patients in the hospital or extended care facility.

(Sept. 29, 1978, D.C. Law 2-112, § 2, 25 DCR 1471.)

Legislative History of Law 2-112. Law 2-112 was introduced in Council and assigned Bill No. 2-233, which was referred to the Committee on the Judiciary. The Bill was adopted on first, amended first, and second readings on May 30, 1978, June 13, 1978 and June 27, 1978, respectively. There being no action by the Mayor, it was

assigned Act No. 2-236 and transmitted to both Houses of Congress for its review.

Short title. The first section of the act of Sept. 29, 1978, D.C. Law 2-112, provided “That this act may be cited as the ‘Medical Records Act of 1978.’”

§ 32-362. Authority to transmit data, etc., to committees.

(a) Any person in the District of Columbia may transmit, upon request and, if required by the provisions of section 14-307, with the consent of the patient, to any medical utilization review committee, peer review committee, tissue review committee or medical staff committee, operating in the District of Columbia, any report, note, record or other data or other information which such person properly has in his possession relating to the medical or psychological services provided to any person.

(b) No person who provides any report, note, record or other data or information pursuant to subsection (a) of this section shall be liable to any other person for damages or equitable relief by reason of his providing such report, note, record or other data or information unless the information provided was false and the person providing such information knew, or had reason to believe, that the information was false. (Sept. 29, 1978, D.C. Law 2-112, § 3, 25 DCR 1471.)

Legislative History of Law 2-112. See note to § 32-361.

§ 32-363. Liability of committee members for action taken.

No member of a medical utilization review committee, a peer review committee, a medical staff committee or a tissue review committee, operating in the District of Columbia, shall be liable to any other person for damages or equitable relief by reason of any action taken or recommendation made by the member or by the committee to which the member belongs, if the action taken was within the scope of the functions of the committee and if the committee member acted in the reasonable belief that his action was warranted by the facts known to him after reasonable effort to obtain the facts of the matter. (Sept. 29, 1978, D.C. Law 2-112, § 4, 25 DCR 1471.)

Legislative History of Law 2-112. See note to § 32-361.

§ 32-364. Confidentiality of identity in publications.

Any publication by any medical utilization review committee, peer review committee, medical staff committee or tissue review committee shall keep confidential the identity of any patient whose condition, care or treatment was a part thereof. (Sept. 29, 1978, D.C. Law 2-112, § 5, 25 DCR 1471.)

Legislative History of Law 2-112. See note to § 32-361.

§ 32-365. Use of committee reports, etc., in judicial and administrative proceedings.

(a) Absent a showing of extraordinary necessity, the minutes, analyses, preliminary and final findings and reports of a medical utilization review committee, peer review committee, medical staff committee or tissue review committee shall not be subject to discovery or admissible into evidence in any civil or administrative proceeding. This qualified privilege does not extend to primary health records or to any oral or written statements submitted to or presented before a medical utilization review committee, peer review committee, medical staff committee or tissue review committee.

(b) This section shall not affect the right of any individual employed by or formerly employed by, working for or formerly working for or associated with or formerly associated with a hospital or extended care facility operating within the District of Columbia, a professional medical society or psychological association operating within the District of Columbia, a medical school engaged in research within the District of Columbia, a department, agency or instrumentality of the federal government operating within the District of Columbia or a department or agency of the District of Columbia government to admit into evidence or subject to discovery the minutes and reports of a medical utilization review committee, peer review committee, medical staff committee or tissue review committee for the limited purpose of adjudicating the appropriateness of an adverse action affecting the employment, work or association or the termination of employment, work or association of such person by such institution. (Sept. 29, 1978, D.C. Law 2-112, § 6, 25 DCR 1471.)

Legislative History of Law 2-112. See note to § 32-361.

CHAPTER 13—D.C. GENERAL HOSPITAL COMMISSION

Subchapter II.—D.C. General Hospital Commission		Subchapter V.—Miscellaneous Provisions	
Sec.		Sec.	
32-1320.	Duties and powers.	32-1351.	Purchasing.
Subchapter IV.—Hospital Finances			
32-1342.	Audits.		

Subchapter II.—D.C. General Hospital Commission

§ 32-1320. Duties and powers.

In addition to those powers conferred elsewhere in this chapter, the Commission is hereby charged with the duty to govern all affairs of D.C. General Hospital and shall have all powers necessary or convenient to carry out the purposes of this chapter including, but not limited to the following;

* * * * *

(8) To enter into negotiations and binding contracts to achieve any or all of its purposes, including arrangements for certain services to be provided by other hospitals if economy or sophistication of required service so dictate; Provided, that nothing in this section shall be construed to alter the contracting responsibilities of the Department of General Services with respect to capital construction projects.

* * * * *

(As amended June 30, 1978, D.C. Law 2-89, § 2, 24 DCR 9756.)

Effect of Amendment.
1978 — Act June 30, 1978, D.C. Law 2-89, amended section by striking “pursuant to council regulations” in paragraph (8).
Emergency Act Amendments.
1978 — For temporary amendment of paragraph (8), see sec. 2 of the District of Columbia General Hospital Commission Act Emergency Amendments of 1978 (D.C. Act 2-170, Mar. 31, 1978, 24 DCR 9262); and sec. 2 of the District of Columbia General Hospital Commission Act

Second Emergency Amendments of 1978 (D.C. Act 2-226, July 10, 1978, 25 DCR 1430).
Legislative History of Law 2-89. Law 2-89 was introduced in Council and assigned Bill No. 2-208, which was referred to the Committee on Human Resources and the Aging. The Bill was adopted on first and second readings on March 21, 1978 and April 4, 1978, respectively. Signed by the Mayor on April 21, 1978, it was assigned Act No. 2-186 and transmitted to both Houses of Congress for its review.

Subchapter IV.—Hospital Finances

§ 32-1343. Audits.

(a) The Municipal Audit and Inspection Division of the Office of Budget and Management Systems shall audit any and all funds, under the control of the Department of Human Resources on September 30, 1977, which remain available for expenditure and are determined to be transferable to the D.C. General Hospital Fund in accordance with the provisions of this subchapter; and shall submit a report of the audit to the Mayor of the District of Columbia, the Council of the District of Columbia and to the D.C. General Hospital Commission. In addition, the Municipal Audit and Inspection Division shall monitor and review the establishment of accounts for all assets of the D.C. General Hospital and shall determine that generally accepted accounting methods are used to establish and record the asset values in the D.C. General Hospital’s accounts.

* * * * *

(As amended June 30, 1978, D.C. Law 2-89, § 2, 24 DCR 9756.)

Effect of Amendment.
1978 — Act June 30, 1978, D.C. Law 2-89, amended subsection (a) generally.
Emergency Act Amendments.
1978 — For temporary amendment of subsection (a), see sec. 2 of the District of Columbia General Hospital

Commission Act Emergency Amendments of 1978 (D.C. Act 2-170, Mar. 31, 1978, 24 DCR 9262); and sec. 2 of the District of Columbia General Hospital Commission Act Second Emergency Amendments of 1978 (D.C. Act 2-226, July 10, 1978, 25 DCR 1430).
Legislative History of Law 2-89. See note to § 32-1320.

Subchapter V.—Miscellaneous Provisions

§ 32-1351. Purchasing.

- (a) No Commissioner, officer or employee designated to do purchasing for the Commission shall have any material interest, either directly or indirectly, in any contract for the purchase of supplies, materials, equipment or services.
- (b) The Commission shall develop standards for purchases of and contracts for supplies and services consistent with section 3709 of the Revised Statutes of the United States, as amended (D.C. Code, sec. 1-808). Emergency purchases shall be allowed subject to the approval of persons delegated to do so by the Commission, and a full written determination and finding of the circumstances necessitating such emergency purchase, along with the purchase documents, shall be immediately open to public inspection.

* * * * *

(As amended June 30, 1978, D.C. Law 2-89, § 2, 24 DCR 9756.)

Effect of Amendment.	
1978 — Act June 30, 1978, D.C. Law 2-89, amended subsections (a) and (b) generally.	Hospital Commission Act Emergency Amendments of 1978 (D.C. Act 2-170, Mar. 31, 1978, 24 DCR 9262); and sec. 2 of the District of Columbia General Hospital Commission Act Second Emergency Amendments of 1978 (D.C. Act 2-226, July 10, 1978, 25 DCR 1430).
Emergency Act Amendments.	
1978 — For temporary amendment of subsections (a) and (b), see sec. 2 of the District of Columbia General	Legislative History of Law 2-89. See note to § 32-1320.

TITLE 33.—FOOD AND DRUGS

Chap.	Sec.
4. Narcotic Drugs	33-401
7. Regulation and Control of Certain Drugs Other than Narcotics	33-701
8. Prescription Drug Price Information	33-801

CHAPTER 4.—NARCOTIC DRUGS

§ 33-402. Acts declared unlawful.

NOTES TO DECISIONS

- I. General Consideration.
- II. Elements and Proof of Offenses.
- III. Validity of Arrests, Searches and Seizures.

I. GENERAL CONSIDERATION.

Dual convictions erroneous. — Dual convictions for possession of heroin under this section and for possession of the same drug with intent to distribute under 21 U.S.C. § 841(a), even if followed by concurrent sentences, constitute error. *United States v. Dorsey* (1978, 591 F.2d 922).

II. ELEMENTS AND PROOF OF OFFENSES.

Knowing possession required. — The possession spoken of in this section must be a knowing possession. *Stewart v. United States* (D.C. 1978, 395 A.2d 3).

The evidence was sufficient to show knowing possession of marijuana where it was shown that both defendants lived at the address where the marijuana was found, that there were substantial amounts of marijuana involved and that it was all readily observable throughout the house. *Stewart v. United States* (D.C. 1978, 395 A.2d 3).

Possession may be either actual or constructive; that is, it is enough that an accused was knowingly in a position or had the right to exercise dominion and control over a drug, either directly or through others. *United States v. Staten* (1978, 581 F.2d 878).

To prove constructive possession of narcotics, the government must show that the defendant was in a position or had the right to exercise dominion and control over the drugs. *Stewart v. United States* (D.C. 1978, 395 A.2d 3).

Constructive possession may be jointly shared. *United States v. Staten* (1978, 581 F.2d 878).

And may be established by circumstantial evidence. — Constructive possession may be established by circumstantial as well as direct evidence. *United States v. Staten* (1978, 581 F.2d 878).

Possession evidenced by presence, proximity or association plus linkage to operation. — The presence of an accused on the premises, his proximity to the drug or his association with another person may establish a prima facie case of drug possession when colored by evidence linking the accused to an ongoing criminal operation of which that possession is a part. *United States v. Staten* ¶1978, 581 F.2d 878).

Intent to distribute may be inferred from possession of drug-packaging paraphernalia or of a quantity of drugs larger than needed for personal use. *United States v. Staten* (1978, 581 F.2d 878).

Intent to distribute personally is unnecessary as long as distribution by someone is the end purpose of the possession. *United States v. Staten* (1978, 581 F.2d 878).

Expert’s testimony admissible despite lack of specific recall. — Where an expert witness’s tests for heroin had been performed a year before trial and he did not specifically recall making them but was able to testify from his records as to their results, his lack of specific recall was not as critical as it might have been had his findings been based on subjective observation rather than on standard objective tests, so that at most his credibility with the jury was affected, but his testimony was admissible. *Lee v. United States* (D.C. 1978, 383 A.2d 360).

Differing evaluations of heroin quality affected weight of evidence only. — Where there was no evidence of tampering, the mere fact that two chemists reached different results in their qualitative analysis of heroin content went to the weight of the physical evidence, not to its admissibility. *Ford v. United States* (D.C. 1978, 396 A.2d 191).

III. VALIDITY OF ARRESTS, SEARCHES AND SEIZURES.

Subsection (b) applies in narrow situation in which a drug offense cannot for probable cause purposes be regarded as anything but a misdemeanor and the arresting officer has not personally observed the allegedly criminal behavior but acts on a reliable tip. *United States v. Hamilton* (D.C. 1978, 390 A.2d 449).

Subsection (b) does not preempt or detract from any other authority to arrest in drug cases but instead plugs what Congress considered a loophole in the law — that a police officer could not effect an arrest on misdemeanor drug charges unless he had personally observed commission of the offense. *United States v. Hamilton* (D.C. 1978, 390 A.2d 449).

The fact that the defendant was charged with a misdemeanor violation of subsection (a) did not preclude finding his arrest valid under § 23-581 (a) (1) (A). *United States v. Hamilton* (D.C. 1978, 390 A.2d 449).

Narrow applicability of subsection (c). — The evidentiary limitation of subsection (c) comes into play only when an arrest is effected under subsection (b). *United States v. Hamilton* (D.C. 1978, 390 A.2d 449).

Evidence sufficient. — *United States v. Staten* (1978, 581 F.2d 878).

Cited in *United States v. Foster* (1978, 584 F.2d 997); *United States v. Hall* (1977, 571 F.2d 649, 187 U.S. App. D.C. 215); *United States v. Dixon* (1978, 446 F. Supp. 58);

Schwasta v. United States (D.C. 1978, 392 A.2d 1071);
Jones v. United States (D.C. 1978, 391 A.2d 1188).

CHAPTER 7.—REGULATION AND CONTROL OF CERTAIN DRUGS OTHER THAN NARCOTICS

§ 33-701. Definitions.

NOTES TO DECISIONS

Council need not specify attributes of dangerousness.
 — Where the Council specifically found that a drug was “dangerous” within the meaning of subdivision (1) (C), that reference necessarily incorporated the specific attributes

of dangerousness enumerated in subdivision (1) (C), and an explicit statement as to which attribute marked the drug in question was not required. *United States v. Lowery* (D.C. 1977, 382 A.2d 1007).

§ 33-702. Prohibited acts.

NOTES TO DECISIONS

Evidence sufficient. — *United States v. Foster* (1978, 584 F.2d 997).

Cited in *United States v. Dixon* (1978, 446 F. Supp. 58);
Rutledge v. United States (D.C. 1978, 392 A.2d 1062);

United States v. Speed (D.C. 1978, 388 A.2d 892); *In re J.G.J.* (D.C. 1978, 388 A.2d 472); *United States v. Davis* (D.C. 1978, 387 A.2d 1091); *United States v. Lowery* (D.C. 1977, 382 A.2d 1007).

CHAPTER 8.—PRESCRIPTION DRUG PRICE INFORMATION

Subchapter II.—Prescription Drug Price Posting

§ 33-811. List of most commonly used prescription drugs.

Emergency Act Amendment.

1978—For temporary amendment of section, see sec. 3

of the Drug Price Posting Emergency Act of 1978 (D.C. Act 2-211, June 27, 1978, 25 DCR 300).

§ 33-812. Posters listing most commonly used prescription drugs to be furnished pharmacies — Style — Information required.

Emergency Act Amendment.

1978—For temporary amendment of section, see sec. 4

of the Drug Price Posting Emergency Act of 1978 (D.C. Act 2-211, June 27, 1978, 25 DCR 300).

§ 33-814. Quotation of cost of prescription drugs by pharmacies upon request required.

Emergency Act Amendment.

1978—For temporary amendment of section, see sec. 5

of the Drug Price Posting Emergency Act of 1978 (D.C. Act 2-211, June 27, 1978, 25 DCR 300).

TITLE 34.—HOTELS AND LODGING-HOUSES

Cross references. For smoke detector requirements, see § 5-328 et seq. For rental housing, see § 45-1681 et seq. For hotel occupancy tax, see § 47-3101 et seq.

TITLE 35.—INSURANCE

Chap.	Sec.
4. Department of Insurance with Respect to Life Companies	35-401
5. Domestic Life Companies	35-501
7. Provisions Relating to All Life Insurance Companies	35-701

CHAPTER 4.—DEPARTMENT OF INSURANCE WITH RESPECT TO LIFE COMPANIES

§ 35-414. False statements in application for insurance.

NOTES TO DECISIONS

“Material” construed. — A misrepresentation that influences an insurer to assume a risk which it otherwise would not have underwritten inevitably is material. *Jones v. Prudential Ins. Co. of America* (D.C. 1978, 388 A.2d 476).

Misrepresentation material as matter of law. — Where an insurance applicant did not disclose her addiction to heroin and uncontradicted testimony established that had the truth been disclosed her application would have been rejected, the trial court correctly ruled that the misrepresentation was material as matter of law. *Jones v. Prudential Ins. Co. of America* (D.C. 1978, 388 A.2d 476).

Summary judgment in favor of insurer was proper because even if unintentional, misrepresentations as to the insured’s cirrhosis of the liver without doubt materially affected the hazard assumed by the company and its decision to accept the risk. *Blair v. Inter-Ocean Ins. Co.* (1978, 589 F.2d 730).

And court properly directed verdict for insurer. — Where insured failed to reveal that he was being treated

for high blood pressure and the evidence established without contradiction that the company would not have issued the policy had it been apprised of his medical condition, misrepresentation was established as a matter of law and, there being no jury question, the trial court correctly directed a verdict for the insurance company. *Westhoven v. New England Mut. Life Ins. Co.* (D.C. 1978, 384 A.2d 36).

Evidence of misrepresentation supported judgment n.o.v. — Evidence that an insured had misrepresented her history of drug use was sufficient to support a judgment notwithstanding the verdict. *Jones v. Prudential Ins. Co. of America* (D.C. 1978, 388 A.2d 476).

There need be no causal relationship between misrepresented matter and death of insured where the misrepresentation would have affected the company’s acceptance of the risk or where it was made with intent to deceive. *Jones v. Prudential Ins. Co. of America* (D.C. 1978, 388 A.2d 476).

CHAPTER 5.—DOMESTIC LIFE COMPANIES

§ 35-501. Articles of incorporation.

NOTES TO DECISIONS

Cited in *Travelers Ins. Co. v. District of Columbia* (D.C. 1978, 382 A.2d 269).

§ 35-502. Filing articles of incorporation — Notice of intention to form company — Bond of incorporators.

NOTES TO DECISIONS

Cited in *Travelers Ins. Co. v. District of Columbia* (D.C. 1978, 382 A.2d 269).

CHAPTER 7.—PROVISIONS RELATING TO ALL LIFE INSURANCE COMPANIES

Sec.	Sec.
35-701. Superintendent to value policies — Legal standard of valuation.	35-705b. Standard nonforfeiture law for life insurance.
35-703. Standard provisions required in life insurance policies.	35-705c. Standard nonforfeiture law for individual deferred annuities.
35-705. Standard provisions required in annuities and pure endowment contracts.	35-705d. Loan provisions in policies.
	35-721. When actual premium for life policy is less than valuation net premium.

§ 35-701. Superintendent to value policies — Legal standard of valuation.

* * * * *

(b) This subsection shall apply to only those policies and contracts issued prior to the operative date of section 35-705b (the standard nonforfeiture law).

The legal minimum standard for the valuation of life-insurance contracts issued before January 1, 1935, shall be the method and basis of valuation heretofore applied by the Superintendent in the valuation of such contracts, and for life-insurance contracts issued on and after said date shall be the one-year preliminary term method of valuation, except as hereinafter modified, on the basis of the American Experience Table of Mortality with interest at 3½ per centum per annum: Provided, that any life company may, at its option, value its insurance contracts issued on and after January 1, 1935, in accordance with their terms on the basis of the American Men Ultimate Table of Mortality with interest not higher than 3½ per centum per annum by the level net premium method or by the modified preliminary term method hereinafter described.

If the premium charged for term insurance under a limited payment life preliminary term policy providing for the payment of all premiums thereon in less than twenty years from date of the policy, or under an endowment preliminary term policy, exceeds that charged for like insurance under twenty payment life preliminary term policies of the same company, the reserve thereon at the end of the year, including the first, shall not be less than the reserve on a twenty payment life preliminary term policy issued in the same year and at the same age, together with an amount which shall be equivalent to the accumulation of a net level premium sufficient to provide for a pure endowment at the end of the premium payment period, equal to the difference between the value at the end of such period of such a twenty payment life preliminary term policy and the full net level premium reserve at such time of such a limited payment life or endowment policy. The premium payment period is the period during which premiums are concurrently payable under such twenty payment life preliminary term policy and such limited payment life or endowment policy.

Policies issued on the preliminary term method shall contain a clause specifying that the reserve thereof shall be computed in accordance with modified preliminary term method of valuation provided for herein.

Except as otherwise provided in paragraph (2) of subsection (c) for group annuity and pure endowment contracts, the legal minimum standard for the valuation of annuities issued on and after January 1, 1935, shall be McClintock's Table of Mortality Among Annuitants, with interest at 4 per centum per annum, but annuities deferred ten or more years and written in connection with life insurance shall be valued on the same basis as that used in computing the consideration or premium therefor, or upon any higher standard at the option of the company.

The legal minimum standard for the valuation of industrial policies issued after January 1, 1935, shall be the American Experience Table of Mortality with interest at 3½ per centum per annum: Provided, that any life company may voluntarily value its industrial policies on the basis of the standard industrial mortality table or the substandard industrial mortality table by the level net premium method or in accordance with their terms by the modified preliminary term method hereinbefore described.

The Superintendent may vary the standards of interest and mortality in the case of alien companies as to contracts issued by such companies in other countries than the United States, and in particular cases of invalid lives and other extra hazards.

Reserves for all such policies and contracts may be calculated, at the option of the company, according to any standards which produce greater aggregate reserves for all such policies and contracts than the minimum reserves required by this subsection.

(c) This subsection shall apply to only those policies and contracts issued on or after the operative date of section 35-705b (the standard nonforfeiture law) except as otherwise provided in paragraph (2) of this subsection for group annuity and pure endowment contracts issued prior to such operative date.

(1) Except as otherwise provided in paragraph (2) of this subsection, the minimum standard

for the valuation of all such policies and contracts shall be the Commissioner's reserve valuation methods defined in paragraphs (3) and (4) of this subsection and in section 35-721, 3½ per centum interest per annum, or in the case of policies and contracts, other than annuity and pure endowment contracts, issued on or after the effective date of the Standard Valuation and Nonforfeiture Amendments Emergency Act of 1978, 4½ per centum interest per annum, and the following tables:

* * * * *

(i) For all ordinary policies of life insurance issued on the standard basis, excluding any disability and accidental death benefits in such policies, the Commissioners 1941 Standard Ordinary Mortality Table for such policies issued prior to the operative date of the next to the last paragraph of section 35-705b(d), and the Commissioners 1958 Standard Ordinary Mortality Table for such policies issued on or after such operative date; provided that for any category of such policies issued on female risks all modified net premiums and present values referred to in this section may be calculated according to an age not more than six years younger than the actual age of the insured.

(ii) For all industrial life insurance policies issued on the standard basis, excluding any disability and accidental death benefits in such policies, the 1941 Standard Industrial Mortality Table for such policies issued prior to the operative date of the last paragraph of section 35-705b(d), and the Commissioners 1961 Standard Industrial Mortality Table for such policies issued on or after such operative date: Provided, that for any category of such policies issued on female risks all modified net premiums and present values referred to in this section may be calculated according to an age not more than six years younger than the actual age of the insured.

* * * * *

(2) The minimum standard for the valuation of all individual annuity and pure endowment contracts issued on or after the operative date of this paragraph and for all annuities and pure endowments purchased on or after such operative date under group annuity and pure endowment contracts shall be the Commissioner's reserve valuation methods defined in paragraphs (3) and (4) of this subsection and the following tables and interest rates:

(i) For individual single premium immediate annuity contracts, excluding any disability and accidental death benefits in such contracts, the 1971 Individual Annuity Mortality Table or any modification of this table approved by the Superintendent and 7½ per centum interest per annum.

(ii) For individual annuity and pure endowment contracts, other than single premium immediate annuity contracts, excluding any disability and accidental death benefits in such contracts, the 1971 Individual Annuity Mortality Table or any modification of this table approved by the Superintendent and 5½ per centum interest per annum for single premium deferred annuity and pure endowment contracts and 4½ per centum interest per annum for all other such individual annuity and pure endowment contracts.

(iii) For all annuities and pure endowments purchased under group annuity and pure endowment contracts, excluding any disability and accidental death benefits purchased under such contracts, the 1971 Group Annuity Mortality Table or any modification of this table approved by the Superintendent and 7½ per centum interest per annum.

After the effective date of the Standard Valuation and Nonforfeiture Amendments Emergency Act of 1978, any company may file with the Superintendent a written notice of its election to comply with the provisions of this paragraph after a specified date before January 1, 1979, which shall be the operative date of this paragraph for such company, provided, a company may elect a different operative date for individual annuity and pure endowment contracts from that elected for group annuity and pure endowment contracts. If a company makes no such election, the operative date of this paragraph for such company shall be January 1, 1979.

(3) Except as otherwise provided in paragraph (4) of this subsection and in section 35-721,

reserves according to the Commissioner's reserve valuation method, for the life insurance and endowment benefits of policies providing for a uniform amount of insurance and requiring the payment of uniform premiums shall be the excess, if any, of the present value, at the date of valuation, of such future guaranteed benefits provided for by such policies, over the then present value of any future modified net premiums therefor. The modified net premiums for any such policy shall be such uniform percentage of the respective contract premiums for such benefits that the present value, at the date of issue of the policy, of all such modified net premiums shall be equal to the sum of the then present value of such benefits provided for by the policy and the excess of (A) over (B), as follows:

(A) A net level annual premium equal to the present value, at the date of issue, of such benefits provided for after the first policy year, divided by the present value, at the date of issue, of an annuity of one per annum payable on the first and each subsequent anniversary of such policy on which a premium falls due: Provided, however, that such net level annual premium shall not exceed the net level annual premium on the nineteen year premium whole life plan for insurance of the same amount at an age one year higher than the age at issue of such policy.

(B) A net one-year term premium for such benefits provided for in the first policy year.

Reserves according to the Commissioner's reserve valuation method for (i) life-insurance policies providing for a varying amount of insurance or requiring the payment of varying premiums, (ii) group annuity and pure endowment contracts purchased under a retirement plan or plan of deferred compensation, established or maintained by an employer (including a partnership or sole proprietorship), or by an employee organization or by both, other than a plan providing individual retirement accounts or individual retirement annuities under section 408 of the Internal Revenue Code of 1954 (88 Stat. 959; 26 U.S.C. § 408), as now or hereafter amended, (iii) disability and accidental death benefits in all policies and contracts, and (iv) all other benefits, except life insurance and endowment benefits in life-insurance policies, and benefits provided by all other annuity and pure endowment contracts shall be calculated by a method consistent with the principles of this paragraph (3), except that any extra premiums charged because of impairments or special hazards shall be disregarded in the determination of modified net premiums.

(4) This paragraph shall apply to all annuity and pure endowment contracts except those group annuity and pure endowment contracts for which reserves are to be calculated by a method consistent with the principles of paragraph (3) of this subsection.

Reserves according to the Commissioner's annuity reserve method for benefits under annuity or pure endowment contracts, excluding any disability and accidental death benefits in such contracts, shall be the greatest of the respective excesses of the present values, at the date of valuation, of the future guaranteed benefits, including guaranteed nonforfeiture benefits, provided for by such contracts at the end of each respective contract year, over the present value, at the date of valuation, of any future valuation considerations derived from future gross considerations, required by the terms of such contract, that become payable prior to the end of such respective contract year. The future guaranteed benefits shall be determined by using the mortality table, if any, and the interest rate, or rates, specified in such contracts for determining guaranteed benefits. The valuation considerations are the portions of the respective gross considerations applied under the terms of such contracts to determine nonforfeiture values.

(5) In no event shall a company's aggregate reserves for all life-insurance policies, excluding disability and accidental death benefits, be less than the aggregate reserves calculated in accordance with the method set forth in paragraph (3) of this subsection and section 35-721 and the mortality table or tables and rate or rates of interest used in calculating nonforfeiture benefits for such policies.

(6) Reserves for any category of policies, contracts, or benefits as established by the Superintendent, may be calculated, at the option of the company, according to any standards which produce greater aggregate reserves for such category than those calculated according to the minimum standard herein provided, but the rate or rates of interest used for policies and contracts, other than annuity and pure endowment contracts, shall not be higher than the

corresponding rate or rates of interest used in calculating any nonforfeiture benefits provided for therein.
(As amended Oct. 13, 1978, D.C. Law 2-120, §§ 2, 3, 25 DCR 1519.)

Effect of Amendment.
1978 — Act Oct. 13, 1978, D.C. Law 2-120, amended section by amending the fifth paragraph of subsection (b) and by amending subsection (c) generally.
Emergency Act Amendment.
1978 — For temporary amendment of section, see secs. 2 and 3 of the Second Standard Valuation and Nonforfeiture Amendments Emergency Act of 1978 (D.C. Act 2-282, Oct. 16, 1978, 25 DCR 3504).

Legislative History of Law 2-120. Law 2-120 was introduced in Council and assigned Bill No. 2-304, which was referred to the Committee on Public Services and Consumer Affairs. The Bill was adopted on first and second readings on June 27, 1978 and July 11, 1978, respectively. Signed by the Mayor on August 2, 1978, it was assigned Act No. 2-250 and transmitted to both Houses of Congress for its review.

§ 35-703. Standard provisions required in life insurance policies.

No policy of life insurance other than industrial insurance, annuities, and pure endowments with or without return of premiums or of premiums and interest shall be issued or delivered in the District or be issued by a life company organized under the laws of the District after the 1st day of January 1935, unless the same shall contain in substance the following:

* * * * *

(6) A provision that after the policy has been in force three full years the company at any time, while the policy is in force, will advance, on proper assignment or pledge of the policy and on the sole security thereof, at a specified rate of interest, a sum equal to, or at the option of the insured less than the amount required by section 35-705d under the conditions specified thereby; and that the company will deduct from such loan value any indebtedness not already deducted in determining such value and any unpaid balance of the premium for the current policy year, and may collect interest in advance on the loan to the end of the current policy year. This provision shall not be required in term insurance, nor shall it apply to temporary insurance or pure endowment insurance, issued or granted in exchange for lapsed or surrendered policies. The policy may further provide that if the interest on the loan is not paid when due it shall be added to the existing loan and shall bear interest at the same rate.

* * * * *

(As amended Oct. 13, 1978, D.C. Law 2-120, § 4, 25 DCR 1519.)

Effect of Amendment.
1978 — Act Oct. 13, 1978, D.C. Law 2-120, amended section by striking “section 35-705c” and inserting in lieu thereof “section 35-705d” in subsection (6).
Emergency Act Amendment.
1978 — For temporary amendment of section, see sec.

4 of the Second Standard Valuation and Nonforfeiture Amendments Emergency Act of 1978 (D.C. Act 2-282, Oct. 16, 1978, 25 DCR 3504).
Legislative History of Law 2-120. See note to § 35-701. Section referred to in section. 35-705d.

§ 35-705. Standard provisions required in annuities and pure endowment contracts.

On and after January 1, 1935, no annuity or pure endowment contract shall be issued or delivered in the District unless and until a copy of the form thereof has been filed with the superintendent and formally approved by him.
Except in the case of a reversionary annuity, otherwise called a “survivorship annuity,” or an annuity contracted by an employer in behalf of his employees, no annuity or pure endowment contract shall be so issued or delivered in this District unless it contains, in substance, the following provisions:

* * * * *

Sixth. A provision specifying the options available in the event of cessation of payment of considerations under the contract. In the case of contracts issued on or after the operative date of section 35-705c (the standard nonforfeiture law for individual deferred annuities), such options

shall be in accordance with section 35-705c. In the case of contracts issued prior to the operative date of section 35-705c, such option shall provide that if the contract after having been in force for three full years, shall, by its terms, lapse or become forfeited because any stipulated payment to the company shall not have been made, the reserve on such contract, computed according to the standard adopted by said company in accordance with this chapter, shall, after deducting one-fifth of the said entire reserve, and any indebtedness to the company under the contract, be applied as a net single payment, according to said standard, for the purchase of a paid-up annuity or pure endowment contract, which may be nonparticipating and which shall be payable by the company under the same terms and conditions, except as to amount, as the original contract. For contracts issued prior to the operative date of section 35-705c, a company may provide, in lieu of such paid-up values, for a paid-up annuity or pure endowment contract in an amount bearing the same proportion to the original annuity or pure endowment contract as the number of stipulated payments which shall have been made to the company shall bear to the total number of stipulated payments required to be made to the company under the contract, and if there be any indebtedness to the company under the contract, the amount of such paid-up annuity or pure endowment shall be reduced by an amount bearing the same proportion to such paid-up annuity or pure endowment as such indebtedness bears to the reserve on such paid-up annuity or pure endowment, computed according to the standard adopted by said company in accordance with this chapter.

* * * * *

(As amended Oct. 13, 1978, D.C. Law 2-120, § 5, 25 DCR 1519.)

Effect of Amendment.

1978 — Act Oct. 13, 1978, D.C. Law 2-120, amended section by inserting the language immediately following the words "Sixth. A provision" in paragraph 9 and by striking "A company" in the last sentence of paragraph 9 and inserting in lieu thereof "For contracts issued prior to the operative date of section 35-705c, a company".

Emergency Act Amendment.

1978 — For temporary amendment of section, see sec. 5 of the Second Standard Valuation and Nonforfeiture Amendments Emergency Act of 1978 (D.C. Act 2-282, Oct. 16, 1978, 25 DCR 3504).

Legislative History of Law 2-120. See note to § 35-701.

§ 35-705b. Standard nonforfeiture law for life insurance.

* * * * *

(d) Except as provided in the third paragraph of this subsection, the adjusted premiums for any policy referred to in subsection (a) shall be calculated on an annual basis and shall be such uniform percentage of the respective premiums specified in the policy for each policy year, excluding any extra premiums charged because of impairments or special hazards, that the present value, at the date of issue of the policy, of all such adjusted premiums shall be equal to the sum of (i) the then present value of the future guaranteed benefits provided for by the policy; (ii) 2 per centum of the amount of insurance, if the insurance be uniform in amount, or of the equivalent uniform amount, as hereinafter defined, if the amount of insurance varies with duration of the policy; (iii) 40 per centum of the adjusted premium for the first policy year; (iv) 25 per centum of either the adjusted premium for the first policy year or the adjusted premium for a whole life policy of the same uniform or equivalent uniform amount with uniform premiums for the whole of life issued at the same age for the same amount of insurance, whichever is less: Provided, however, that in applying the percentages specified in (iii) and (iv) above, no adjusted premium shall be deemed to exceed 4 per centum of the amount of insurance or uniform amount equivalent thereto.

In the case of a policy providing an amount of insurance varying with duration of the policy, the equivalent uniform amount thereof for the purpose of this subsection shall be deemed to be the uniform amount of insurance provided by an otherwise similar policy, containing the same endowment benefit or benefits, if any, issued at the same age and for the same term, the amount of which does not vary with duration and the benefits under which have the same present value at the date of issue as the benefits under the policy: Provided, however, that in the case of a

policy providing a varying amount of insurance issued on the life of a child under age ten, the equivalent uniform amount may be computed as though the amount of insurance provided by the policy prior to the attainment of age ten were the amount provided by such policy at age ten.

The adjusted premiums for any policy providing term insurance benefits by rider or supplemental policy provision shall be equal to (a) the adjusted premiums for an otherwise similar policy issued at the same age without such term insurance benefits, increased, during the period for which premiums for such term insurance benefits are payable, by (b) the adjusted premiums for such term insurance, the foregoing items (a) and (b) being calculated separately and as specified in the first two paragraphs of this subsection except that, for the purposes of (ii), (iii), and (iv) of the first such paragraph, the amount of insurance or equivalent uniform amount of insurance used in the calculation of the adjusted premiums referred to in (b) shall be equal to the excess of the corresponding amount determined for the entire policy over the amount used in the calculation of the adjusted premiums in (a).

Except as otherwise provided in the next succeeding paragraphs of this subsection, all adjusted premiums and present values referred to in this section shall for all policies of ordinary insurance be calculated on the basis of the Commissioners 1941 Standard Ordinary Mortality Table: Provided, that for any category of ordinary insurance issued on female risks, adjusted premiums and present values may be calculated according to an age not more than three years younger than the actual age of the insured, and such calculations for all policies of industrial insurance shall be made on the basis of the 1941 Standard Industrial Mortality Table. All calculations shall be made on the basis of the rate of interest, not exceeding $3\frac{1}{2}$ per centum per annum, specified in the policy for calculating cash surrender values, if any, and paid-up nonforfeiture benefits: Provided, however, that in calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than 130 per centum of the rates of mortality according to such applicable table: Provided further, that for insurance issued on a substandard basis, the calculation of any such adjusted premiums and present values may be based on such other table of mortality as may be specified by the company and approved by the Superintendent.

In the case of ordinary policies issued on or after the operative date of this paragraph as defined herein, all adjusted premiums and present values referred to in this section shall be calculated on the basis of the Commissioners 1958 Standard Ordinary Mortality Table and the rate of interest specified in the policy for calculating cash surrender values, if any, and paid-up nonforfeiture benefits, which rate of interest shall not exceed $3\frac{1}{2}$ per centum per annum except that a rate of interest not exceeding $5\frac{1}{2}$ per centum per annum may be used for policies issued on or after the effective date of the Standard Valuation and Nonforfeiture Amendments Emergency Act of 1978: Provided, that for any category of ordinary insurance issued on female risks, adjusted premiums and present values may be calculated according to an age not more than six years younger than the actual age of the insured: Provided, however, that in calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than those shown in the Commissioners 1958 Extended Term Insurance Table: Provided further, that for insurance issued on a substandard basis, the calculation of any such adjusted premiums and present values may be based on such other table of mortality as may be specified by the company and approved by the Superintendent. After the effective date of the amendatory Act of 1960, any company may file with the Superintendent a written notice of its election to comply with the provisions of this paragraph after a specified date before January first, nineteen hundred and sixty-six. After the filing of such notice, then upon such specified date (which shall be the operative date of this paragraph for such company), this paragraph shall become operative with respect to the ordinary policies thereafter issued by such company. If a company makes no such election, the operative date of this paragraph for such company shall be January first, nineteen hundred and sixty-six.

In the case of industrial policies issued on or after the operative date of this paragraph as defined herein, all adjusted premiums and present values referred to in this section shall be

calculated on the basis of the Commissioners 1961 Standard Industrial Mortality Table and the rate of interest specified in the policy for calculating cash surrender values, if any, and paid-up nonforfeiture benefits, which rate of interest shall not exceed $3\frac{1}{2}$ per centum per annum except that a rate of interest not exceeding $5\frac{1}{2}$ per centum per annum may be used for policies issued on or after the effective date of the Standard Valuation and Nonforfeiture Amendments Emergency Act of 1978: Provided, that for any category of industrial insurance issued on female risks, adjusted premiums and present values may be calculated according to an age not more than six years younger than the actual age of the insured: Provided, however, that in calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than those shown in the Commissioners 1961 Industrial Extended Term Insurance Table: Provided further, that for insurance issued on a substandard basis, the calculation of any such adjusted premiums and present values may be based on such other table of mortality as may be specified by the company and approved by the Superintendent. After the effective date of the amendatory Act of 1962, any company may file with the Superintendent a written notice of its election to comply with the provisions of this paragraph after a specified date before January first, nineteen hundred and sixty-eight. After the filing of such notice, then upon such specified date (which shall be the operative date of this paragraph for such company), this paragraph shall become operative with respect to the industrial policies thereafter by such company. If a company makes no such election, the operative date of this paragraph for such company shall be January first, nineteen hundred and sixty-eight.

* * * * *

(As amended Oct. 13, 1978, D.C. Law 2-120, §§ 6 to 8, 25 DCR 1519.)

Effect of Amendment.

1978 — Act Oct. 13, 1978, D.C. Law 2-120, amended section by amending the title of the section and by amending the fifth and sixth paragraphs of subsection (d) generally.

6, 7 and 8 of the Second Standard Valuation and Nonforfeiture Amendments Emergency Act of 1978 (D.C. Act 2-282, Oct. 16, 1978, 25 DCR 3504).

Legislative History of Law 2-120. See note to § 35-701. Section referred to in sections. 35-701, 35-705d.

Emergency Act Amendment.

1978 — For temporary amendment of section, see secs.

§ 35-705c. Standard nonforfeiture law for individual deferred annuities.

(a) This section shall not apply to any reinsurance, group annuity purchased under a retirement plan or plan of deferred compensation established or maintained by an employer (including a partnership or sole proprietorship) or by an employee organization, or by both, other than a plan providing individual retirement accounts of individual retirement annuities under section 408 of the Internal Revenue Code of 1954 (88 Stat. 959; 26 U.S.C. § 408), as now or hereafter amended, premium deposit fund, variable contract, immediate annuity, any deferred annuity contract after annuity payments have commenced, or reversionary annuity, nor to any contract which shall be delivered outside the District of Columbia through an agent or other representative of the company issuing the contract.

(b) In the case of contracts issued on or after the operative date of this section as defined in subsection (k), no contract of annuity, except as stated in subsection (a), shall be delivered or issued for delivery in the District of Columbia unless it contains in substance the following provisions, or corresponding provisions which in the opinion of the Superintendent are at least as favorable to the contract holder.

(1) That upon cessation of payment of considerations under a contract, the company will grant a paid-up annuity benefit on a plan stipulated in the contract of such value as is specified in subsections (d), (e), (f), (g), and (i).

(2) If a contract provides for a lump sum settlement at maturity, or at any other time, that upon surrender of the contract at or prior to the commencement of any annuity payments, the company will pay in lieu of any paid-up annuity benefit as cash surrender benefit of such amount as is specified in subsections (d), (e), (g), and (i). The company shall reserve the right to defer

the payment of such cash surrender benefit for a period of six months after demand therefor with surrender of the contract.

(3) A statement of the mortality table, if any, and interest rates used in calculating any minimum paid-up annuity, cash surrender or death benefits that are guaranteed under the contract, together with sufficient information to determine the amounts of such benefits.

(4) A brief and general statement of the method to be used in calculating any paid-up annuity, cash surrender or death benefits that may be available under the contract and an explanation of the manner in which such benefits are altered by the existence of any additional amounts credited by the company to the contract, any indebtedness to the company on the contract or any prior withdrawals from or partial surrenders of the contract.

Notwithstanding the requirements of this section, any deferred annuity contract may provide that if no considerations have been received under a contract for a period of two full years and the portion of the paid-up annuity benefit at maturity on the plan stipulated in the contract arising from considerations paid prior to such period would be less than twenty dollars monthly, the company may at its option terminate such contract by payment in cash of the then present value of such portion of the paid-up annuity benefit, calculated on the basis of the mortality table, if any, and interest rate specified in the contract for determining the paid-up annuity benefit, and by such payment shall be relieved of any further obligation under such contract.

(c) The minimum values as specified in subsections (d), (e), (f), (g), and (i) of any paid-up annuity, cash surrender or death benefits available under an annuity contract shall be based upon minimum nonforfeiture amounts as defined in this subsection.

(1) With respect to contracts providing for flexible considerations, the minimum nonforfeiture amount at any time at or prior to the commencement of any annuity payments shall be equal to an accumulation up to such time at a rate of interest of 3 per centum per annum of percentages of the net considerations (as hereinafter defined) paid prior to such time, decreased by the sum of:

(i) any prior withdrawals from or partial surrender of the contract accumulated at a rate of interest of 3 per centum per annum; and

(ii) the amount of any indebtedness to the company on the contract, including interest due and accrued; and increased by any existing additional amounts credited by the company to the contract.

The net considerations for a given contract year used to define the minimum nonforfeiture amount shall be an amount not less than zero and shall be equal to the corresponding gross considerations credited to the contract during that contract year less an annual contract charge of thirty dollars and less a collection charge of one dollar and twenty-five cents per consideration credited to the contract during that contract year. The percentages of net considerations shall be 65 per centum of the net consideration for the first contract year and 87½ per centum of the net considerations for the second and later contract years. Notwithstanding the provisions of the preceding sentence, the percentage shall be 65 per centum of the portion of the total net consideration for any renewal contract year which exceeds by not more than two times the sum of those portions of the net considerations in all prior contract years for which the percentage was 65 per centum.

(2) With respect to contracts providing for fixed scheduled considerations, minimum nonforfeiture amounts shall be calculated on the assumption that considerations are paid annually in advance and shall be defined as for contracts with flexible considerations which are paid annually with two exceptions:

(i) The portion of the net consideration for the first contract year to be accumulated shall be the sum of 65 per centum of the net consideration for the first contract year plus 22½ per centum of the excess of the net consideration for the first contract year over the lesser of the net considerations for the second and third contract years.

(ii) The annual contract charge shall be the lesser of thirty dollars or 10 per centum of the gross annual consideration.

(3) With respect to contracts providing for a single consideration, minimum nonforfeiture

amounts shall be defined as for contracts with flexible considerations except that the percentage of net consideration used to determine the minimum nonforfeiture amount shall be equal to 90 per centum and the net consideration shall be the gross consideration less a contract charge of seventy-five dollars.

(d) Any paid-up annuity benefit available under a contract shall be such that its present value on the date annuity payments are to commence is at least equal to the minimum nonforfeiture amount on that date. Such present value shall be computed using the mortality table, if any, and the interest rate specified in the contract for determining the minimum paid-up annuity benefits guaranteed in the contract.

(e) For contracts which provide cash surrender benefits, such cash surrender benefits available prior to maturity shall not be less than the present value as of the date of surrender of that portion of the maturity value of the paid-up annuity benefit which would be provided under the contract at maturity arising from considerations paid prior to the time of cash surrender reduced by the amount appropriate to reflect any prior withdrawals from or partial surrenders of the contract, such present value being calculated on the basis of an interest rate not more than one percent higher than the interest rate specified in the contract for accumulating the net considerations to determine such maturity value, decreased by the amount of any indebtedness to the company on the contract, including interest due and accrued, and increased by any existing additional amounts credited by the company to the contract. In no event shall any cash surrender benefit be less than the minimum nonforfeiture amount at that time. The death benefit under such contracts shall be at least equal to the cash surrender benefit.

(f) For contracts which do not provide cash surrender benefits, the present value of any paid-up annuity benefit available as a nonforfeiture option at any time prior to maturity shall not be less than the present value of that portion of the maturity value of the paid-up annuity benefit provided under the contract arising from considerations paid prior to the time the contract is surrendered in exchange for, or changed to, a deferred paid-up annuity, such present value being calculated for the period prior to the maturity date on the basis of the interest rate specified in the contract for accumulating the net considerations to determine such maturity value, and increased by any existing additional amounts credited by the company to the contract. For contracts which do not provide any death benefits prior to the commencement of any annuity payments, such present values shall be calculated on the basis of such interest rate and the mortality table specified in the contract for determining the maturity value of the paid-up annuity benefit. However, in no event shall the present value of the paid-up annuity benefit be less than the minimum nonforfeiture amount at the time.

(g) For the purpose of determining the benefits calculated under subsections (e) and (f), in the case of annuity contracts under which an election may be made to have annuity payments commence at optional maturity dates, the maturity date shall be deemed to be the latest date for which election shall be permitted by the contract, but shall not be deemed to be later than the anniversary of the contract next following the annuitant's seventieth birthday or the tenth anniversary of the contract, whichever is later.

(h) Any contract which does not provide cash surrender benefits or does not provide death benefits at least equal to the minimum nonforfeiture amount prior to the commencement of any annuity payments shall include a statement in a prominent place in the contract that such benefits are not provided.

(i) Any paid-up annuity, cash surrender or death benefits available at any time, other than on the contract anniversary under any contract with fixed scheduled considerations, shall be calculated with allowance for the lapse of time and the payment of any scheduled considerations beyond the beginning of the contract year in which cessation of payment of considerations under the contract occurs.

(j) For any contract which provides, within the same contract by rider or supplemental contract provision, both annuity benefits and life insurance benefits that are in excess of the greater of cash surrender benefits or a return of the gross considerations with interest, the minimum nonforfeiture benefits shall be equal to the sum of the minimum nonforfeiture benefits for the annuity portion and the minimum nonforfeiture benefits, if any, for the life insurance

portion computed as if each portion were a separate contract. Notwithstanding the provisions of subsections (d), (e), (f), (g), and (i), additional benefits payable: (1) in the event of total and permanent disability; (2) as reversionary annuity or deferred reversionary annuity benefits; or (3) as other policy benefits additional to life insurance, endowment and annuity benefits, and considerations for all such additional benefits, shall be disregarded in ascertaining the minimum nonforfeiture amounts, paid-up annuity, cash surrender and death benefits that may be required by this section. The inclusion of such additional benefits shall not be required in any paid-up benefits, unless such additional benefits separately would require minimum nonforfeiture amounts, paid-up annuity, cash surrender and death benefits.

(k) After the effective date of the Standard Valuation and Nonforfeiture Amendments Emergency Act of 1978, any company may file with the Superintendent a written notice of its election to comply with the provisions of this section after a specified date which is no more than two years after such effective date. After the filing of such notice, then upon such specified date, which shall be the operative date of this section for such company, this section shall become operative with respect to annuity contracts thereafter issued by such company. If a company makes no such election, the operative date of this section for such company shall be two years after the effective date of the Standard Valuation and Nonforfeiture Amendments Emergency Act of 1978. (Oct. 13, 1978, D.C. Law 2-120, § 9, 25 DCR 1519.)

Effect of Amendment.

1978 — Act Oct. 13, 1978, D.C. Law 2-120, redesignated former section 35-705c as section 35-705d.

Emergency Act Amendment.

1978 — For temporary amendment of section, see sec.

9 of the Second Standard Valuation and Nonforfeiture Amendments Emergency Act of 1978 (D.C. Act 2-282, Oct. 16, 1978, 25 DCR 3504).

Legislative History of Law 2-120. See note to § 35-701.

Section referred to in section. 35-705.

§ 35-705d. Loan provisions in policies.

(a) In the case of ordinary policies issued prior to the operative date of section 35-705b (the standard nonforfeiture law) the loan value referred to in provision (6) of section 35-703 shall be the reserve at the end of the current policy year on the policy and on the dividend additions thereto, if any, exclusive of the reserve on account of return premium insurance and of total and permanent disability and additional accidental death benefits, less a sum not more than 2½ per centum of the amount insured by the policy and of any dividend additions thereto (the policy to specify the mortality table and rate of interest adopted for computing such reserve). The policy may provide that such loan may be deferred for not exceeding six months after the application therefor is made. A company may, in lieu of the provision hereinabove permitted for the deduction from a loan on the policy of a sum not more than 2½ per centum of the amount insured by the policy and of any dividend additions thereto, insert in the policy a provision that one-fifth of the said reserve may be deducted in case of a loan under the policy, or may provide therein that the deduction may be the said 2½ per centum or the one-fifth of the said reserve at the option of the company.

(b) In the case of ordinary policies issued on or after the operative date of section 35-705b (the standard nonforfeiture law) the loan value referred to in provision (6) of section 35-703 shall be the cash surrender value at the end of the current policy year as required by section 35-705b. The company shall reserve the right to defer such loan, except when made to pay premiums, for six months after application therefor is made. (June 19, 1934, ch. 672, Ch. V, § 5c, as added Feb. 19, 1948, 62 Stat. 30, ch. 66, § 4; Oct. 13, 1978, D.C. Law 2-120, § 9, 25 DCR 1519.)

Effect of Amendment.

1978 — Act Oct. 13, 1978, D.C. Law 2-120, redesignated section 35-705c as section 35-705d.

Legislative History of Law 2-120. See note to § 35-701.

Section referred to in section. 35-703.

§ 35-721. When actual premium for life policy is less than valuation net premium.

If in any contract year the gross premium charged by any life insurance company on any policy or contract is less than the valuation net premium for the policy or contract calculated by the method used in calculating the reserve thereon but using the minimum valuation standards of

mortality and rate of interest, the minimum reserve required for such policy or contract shall be the greater of either the reserve calculated according to the mortality table, rate of interest, and method actually used for such policy or contract, or the reserve calculated by the method actually used for such policy or contract but using the minimum standards of mortality and rate of interest and replacing the valuation net premium by the actual gross premium in each contract year for which the valuation net premium exceeds the actual gross premium. (June 19, 1934, 48 Stat. 1176, ch. 672, Ch. V, § 20; Oct. 13, 1978, D.C. Law 2-120, § 10, 25 DCR 1519.)

Effect of Amendment.
1978 — Act Oct. 13, 1978, D.C. Law 2-120, amended section generally.
Emergency Act Amendment.
1978 — For temporary amendment of section, see sec.

10 of the Second Standard Valuation and Nonforfeiture Amendments Emergency Act of 1978 (D.C. Act 2-282, Oct. 16, 1978, 25 DCR 3504).
Legislative History of Law 2-120. See note to § 35-701.
Section referred to in section. 35-701.

TITLE 36.—LABOR

Chap.	Sec.
4. Minimum Wages and Industrial Safety	36-401
5. Workmen’s Compensation	36-501

CHAPTER 4.—MINIMUM WAGES AND INDUSTRIAL SAFETY
Subchapter II.—Industrial Safety

§ 36-431. Purpose of subchapter.

NOTES TO DECISIONS

Basis for burden on employers. — The congressionally-established standard requiring employers to exercise due care for the prevention of all accidents which might thereby be avoided implicitly recognizes that wage earners will not always exercise due care for their own safety. *Martin v. George Hyman Constr. Co.* (D.C. 1978, 395 A.2d 63).

§ 36-432. Definitions.

NOTES TO DECISIONS

“Safe” broadly defined. — The term “safe” as used in this subchapter has been defined broadly. *Martin v. George Hyman Constr. Co.* (D.C. 1978, 395 A.2d 63).

§ 36-433. Additional duties of Board under this subchapter.

NOTES TO DECISIONS

Safety regulations not limited by common law reasonableness standard. — Administratively imposed safety regulations which more specifically define the general duty to provide reasonably safe conditions of employment are not limited by the common law standard of “reasonableness” but rather are valid unless so unreasonable as to be void. *Martin v. George Hyman Constr. Co.* (D.C. 1978, 395 A.2d 63).

Defense of assumption of risk bars a claim based upon breach of a duty imposed by the statutory safety scheme only where the defendant proves (1) that there was available to the wage earner an alternative to encountering the risk, (2) that the wage earner’s choice was fully voluntary, (3) that the alternative afforded the safety mandated by statute, rule or regulation and (4) that the wage earner’s determination to encounter the risk was, under the circumstances, made with willful, wanton or reckless disregard for his own safety. *Martin v. George Hyman Constr. Co.* (D.C. 1978, 395 A.2d 63).

§ 36-438. Employers’ duties — Furnish safe place of employment — Furnish required information — Report employees’ injury, death, or disease — Record of employees.

NOTES TO DECISIONS

Contributory negligence of wage earner does not bar recovery based upon his employer’s breach of the statutory duty to provide reasonably safe working conditions, and it is immaterial whether that duty derives from the general language of the statute or from the provisions of a rule or regulation adopted pursuant to § 36-433. *Martin v. George Hyman Constr. Co.* (D.C. 1978, 395 A.2d 63).

Defense of assumption of risk bars a claim based upon breach of a duty imposed by the statutory safety scheme only where the defendant proves (1) that there was available to the wage earner an alternative to encountering the risk, (2) that the wage earner’s choice was fully voluntary, (3) that the alternative afforded the safety mandated by statute, rule or regulation and (4) that the wage earner’s determination to encounter the risk was, under the circumstances, made with willful, wanton or reckless disregard for his own safety. *Martin v. George Hyman Constr. Co.* (D.C. 1978, 395 A.2d 63).

Safety regulations not limited by common law

reasonableness standard. — Administratively imposed safety regulations which more specifically define the general duty to provide reasonably safe conditions of employment are not limited by the common law standard

of “reasonableness” but rather are valid unless so unreasonable as to be void. *Martin v. George Hyman Constr. Co.* (D.C. 1978, 395 A.2d 63).

CHAPTER 5.—WORKMEN’S COMPENSATION

§ 36-501. Longshoremen’s and Harbor Workers’ Compensation Act made applicable to District of Columbia.

NOTES TO DECISIONS

Sufficient contacts with District to confer jurisdiction over claim. — Claimant who obtained employment through employment agency in District but worked and was injured at the National Airport in Virginia had sufficient contacts with the District to confer jurisdiction on the Benefits Review Board. *Pettus v. American Airlines* (1978, 587 F.2d 627).

Award precluded by res judicata and full faith and credit. — District of Columbia workmen’s compensation award was precluded by rules of res judicata and full faith and credit where decision to terminate payments for refusal to submit to surgery had been made by the

Virginia Industrial Commission after a full and fair adjudication under Virginia law, which was exclusive of all other proceedings. *Pettus v. American Airlines* (1978, 587 F.2d 627).

Adjustment to permanent total disability status permissible despite claimant’s employment. — Adjustment of a claimant’s status from permanent partial disability to permanent total disability was permissible despite the fact that the claimant was employed at the time, where the disability prevented him from any longer making the wages he was receiving when injured. *Haughton Elevator Co. v. Lewis* (1978, 572 F.2d 447).

TITLE 38.—LIENS

Cross reference. For liens for recovery by District of medical care expenses for police and firemen, see § 4-1001 et seq.

TITLE 40.—MOTOR VEHICLES

Chap.	Sec.
1. Registration of Motor Vehicles	40-101
2. Inspection	40-201
3. Operators' Permits	40-301
6. Regulation of Traffic	40-601
8. Regulation of Parking	40-801
9. Installment Sales of Motor Vehicles	40-901
11. Traffic Adjudication	40-1101

CHAPTER 1.—REGISTRATION OF MOTOR VEHICLES

Sec.
40-101. Definitions.
40-103. Fees classified and use of proceeds designated.

§ 40-101. Definitions.

As used in this chapter—

* * * * *

(k) The term “historic motor vehicle” means any motor vehicle whose manufacturer’s model year is at least twenty-five (25) years old or any motor vehicle which is at least fifteen (15) years old and is a make of motor vehicle no longer manufactured: Provided, that the motor vehicle has been or is being restored, preserved or maintained as an exhibition or collector’s item because of its special historical value or significance, has not been substantially altered or modified from the manufacturer’s original specifications and is used on the public highways for the transportation of passengers or property in conjunction with exhibitions, expositions, parades, tours, club activities, or similar activities or events, including transportation directly to or from such activities or events, but in no event used for general transportation. Motor vehicles which are less than twenty-five (25) years old but which are fifteen (15) or more years old and which qualify as historic motor vehicles shall include but not be limited to the following makes which are no longer manufactured: Kaiser, Hudson, DeSoto, Nash, Edsel, Studebaker and Packard. (As amended Feb. 25, 1978, D.C. Law 2-41, § 2, 24 DCR 3629.)

Effect of Amendment.
1978 — Act Feb. 25, 1978, D.C. Law 2-41, amended section by adding subsection (k).
Legislative History of Law 2-41. Law 2-41 was introduced in Council and assigned Bill No. 2-83, which was referred to the Committee on Transportation and

Environmental Affairs. The Bill was adopted on first and second readings on July 26, 1977 and September 13, 1977, respectively. Signed by the Mayor on November 2, 1977, it was assigned Act No. 2-97 and transmitted to both Houses of Congress for its review.
Section referred to in section. 40-103.

§ 40-102. Registration of motor vehicles and trailers — Certificates — Tags — Duplicates — Dealers — Fees — Official and foreign vehicles and trailers — Transfers — Regulations.

NOTES TO DECISIONS

Registration laws inapplicable to federal concessionaires. — The Secretary of the Interior’s exclusive control over the shuttle service between the Mall and the Stadium under 40 U.S.C. § 804 precluded application to a federal concessionaire of local District of	Columbia laws relating to vehicle registration and inspection and tour guide licensing but did not preclude application of local laws relating to certification of foreign corporations. <i>United States v. District of Columbia</i> (1977, 571 F.2d 651, 187 U.S. App. D.C. 217).
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§ 40-103. Fees classified and use of proceeds designated.

* * * * *

(b) Class A: For each passenger vehicle, including passenger vehicles licensed under paragraph (d) of section 47-2331.

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Class D. For each motorcycle, motor bicycle, motor tricycle, and motor wheel, \$21.

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Class F. For each motor vehicle classified by the Mayor or his or her designated agent as an historic motor vehicle which meets the criteria established under section 40-101 (K), \$9.

* * * * *

Class G. For dealers' identification tags and dealers' transport identification tags, first set of tags, \$53, and \$19 for each additional set.

Class H. For each motor vehicle propelled by fuel not subject to taxation under chapter 19 of title 47, and motor vehicles propelled by any means other than motor fuels as defined in said chapter, double the fees provided in this subsection for classes A through D.

* * * * *

(f) No annual motor vehicle registration fee shall be required for a noncommercial motor vehicle owned by any veteran who has been classified by the United States Veterans Administration as totally and permanently disabled as a result of a service incurred or aggravated condition: Provided, that no more than one (1) such vehicle per qualified veteran shall receive this fee exemption.

(g) The Mayor shall direct the Director of the Department of Transportation to design and provide application forms for the exemption provided in subsection (f) of this section. The application shall be accompanied by a statement that the veteran has been classified as totally and permanently disabled by the Veterans Administration so as to meet the requirements of this subsection, and that such disability is the result of a service incurred or aggravated condition.

(As amended Feb. 25, 1978, D.C. Law 2-41, § 2, 24 DCR 3629; Mar. 16, 1978, D.C. Law 2-55, §§ 2, 3, 5, 24 DCR 5424; Mar. 16, 1978, D.C. Law 2-60, § 2, 24 DCR 5778.)

Effect of Amendments.
1978 — Act Feb. 25, 1978, D.C. Law 2-41, amended section by amending subsection (b) to revise class F. Act March 16, 1978, D.C. Law 2-55, amended section by striking out "\$12.00" for class D of subsection (b) and inserting in lieu thereof "\$21", by striking out "G" for class G in subsection (b) and inserting in lieu thereof "H" and by adding new class G to subsection (b). Act March 16, 1978, D.C. Law 2-60, amended section by adding subsections (f) and (g).

Emergency Act Amendments.
1978 — For temporary amendment of classes D, E, F, G and H of subsection (b) see secs. 2, 3 and 4 of the Emergency Act to Provide for Amendments to the District of Columbia Motorized Bicycle Act and the Revenue Act for Fiscal Year 1978 (D.C. Act 2-162, Mar. 16, 1978, 24 DCR 9726); and for temporary amendment adding subsections (f) and (g), see sec. 2 of the District of Columbia Disabled Veterans Exemption Emergency Act of 1978 (D.C. Act

2-165, Mar. 28, 1978, 24 DCR 9241).
Legislative History of Law 2-41. See note to § 40-101.
Legislative History of Law 2-55. Law 2-55 was introduced in Council and assigned Bill No. 2-146, which was referred to the Committee on Finance and Revenue and to the Committee on Transportation and Environmental Affairs for comments. The Bill was adopted on first and second readings on November 8, 1977 and November 22, 1977, respectively. Signed by the Mayor on December 15, 1977, it was assigned Act No. 2-121 and transmitted to both Houses of Congress for its review.
Legislative History of Law 2-60. Law 2-60 was introduced in Council and assigned Bill No. 2-164, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on November 22, 1977 and December 6, 1977, respectively. Signed by the Mayor on January 3, 1978, it was assigned Act No. 2-128 and transmitted to both Houses of Congress for its review.

§ 40-104. Unlawful acts — Penalty.

Section referred to in section. 40-1110.

NOTES TO DECISIONS

Police may stop and question driver when infraction of motor vehicle code is suspected. *United States v. Hill* (1978, 458 F. Supp. 31).

Weapon noticed during stop lawfully seized. — Where police first noticed weapon in glove compartment of car when it was opened by defendant to secure the car’s registration during stop on account of illegible vehicle tag, subsequent seizure of the weapon and arrest resulting therefrom were proper. *United States v. Hill* (1978, 458 F. Supp. 31).

Propriety of impoundment and inventory search. — Police impoundment and subsequent inventory search of vehicle were proper where its illegible temporary tags had been removed and seized and the vehicle could not under this section have been left standing on the public way without tags, but the search of a flight bag found inside the car trunk was beyond the scope of the inventory search. *United States v. Hill* (1978, 458 F. Supp. 31).

CHAPTER 2.—INSPECTION

Sec.
40-201. Annual inspection of motor vehicles — Inspection fee.

§ 40-201. Annual inspection of motor vehicles — Inspection fee.

That except as otherwise currently provided in section 4.202 of Chapter IV of Title 32 of the District of Columbia Rules and Regulations or as otherwise hereinafter provided by the Council of the District of Columbia, all motor vehicles and trailers registered in the District of Columbia shall be inspected annually and at the time of the registration of each motor vehicle or trailer there shall be levied and collected a fee known as the “inspection fee” of \$2. The District of Columbia Council may prescribe regulations to permit a person who owns a motor vehicle or trailer not required to be registered in the District of Columbia to have such motor vehicle or trailer inspected in the District of Columbia. Such regulations shall fix the fee for such inspection in such amount as, in the Council’s judgment, will be commensurate with the cost to the District of Columbia of such inspection. (Feb. 18, 1938, 52 Stat. 78, ch. 31, § 1; July 16, 1947, 61 Stat. 360, ch. 258, Art. IV, § 1; Oct. 12, 1968, Pub. L. 90-567, § 1, 82 Stat. 1002; Oct. 31, 1969, Pub. L. 91-106, title IV, § 403, 83 Stat. 174; Feb. 25, 1978, D.C. Law 2-41, § 4, 24 DCR 3629.)

Effect of Amendment.
1978 — Act Feb. 25, 1978, D.C. Law 2-41, amended section by adding the first clause to the first sentence of the section.

Legislative History of Law 2-41. See note to § 40-101.

Succession in Government. The District of Columbia

Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS

Inspection laws inapplicable to federal concessionaires. — The Secretary of the Interior’s exclusive control over the shuttle service between the Mall and the Stadium under 40 U.S.C. § 804 precluded application to a federal concessionaire of local District of

Columbia laws relating to vehicle registration and inspection and tour guide licensing but did not preclude application of local laws relating to certification of foreign corporations. *United States v. District of Columbia* (1977, 571 F.2d 651, 187 U.S. App. D.C. 217).

CHAPTER 3.—OPERATORS’ PERMITS

Sec.
40-301. Operators’ permits — Application — Examination — Periods for which issued — Fee — Lost permits — Age requirements — Provisions affecting personnel of armed forces of United States and foreign nations —

Sec.
Contents of permits — Possession of operator — Operation without permit prohibited.
40-303. Nonresidents exempt from registration — Period of exemption.

§ 40-301. Operators’ permits — Application — Examination — Periods for which issued — Fee — Lost permits — Age requirements — Provisions affecting personnel of armed forces of United States and foreign nations — Contents of permits — Possession of operator — Operation without permit prohibited.

(c) Any individual to whom has been issued a permit to operate a motor vehicle shall have such permit in his immediate possession at all times when operating a motor vehicle in the District and shall exhibit such permit to any police officer when demand is made therefor. Any individual failing to comply with the provisions of this subdivision shall be subject to a civil fine pursuant to the District of Columbia Traffic Adjudication Act (D.C. Code, sec. 40-1101 et seq.): Provided, that this shall not apply to transient visitors from States in the Union which do not require drivers' permits.

* * * * *

(As amended Sept. 12, 1978, D.C. Law 2-104, § 601, 25 DCR 1275.)

Effect of Amendment.

1978 — Act Sept. 12, 1978, D.C. Law 2-104, amended section by deleting "upon conviction thereof, be fined not less than \$2 nor more than \$40" and inserting in lieu thereof "shall be subject to a civil fine pursuant to the District of Columbia Traffic Adjudication Act" in the second sentence of subsection (c).

601 of the District of Columbia Traffic Adjudication Emergency Act of 1978 (D.C. Act 2-216, July 1, 1978, 25 DCR 1329).

Legislative History of Law 2-104. See note to § 40-1101.

Section referred to in sections. 40-303, 40-1110.

Emergency Act Amendment.

1978 — For temporary amendment of section, see sec.

NOTES TO DECISIONS

Once defendant denied possession of license police appropriately ordered him out of car, since driving without a valid operator's permit is a traffic offense for

which he could have been arrested. *Little v. United States* (D.C. 1978, 393 A.2d 94).

§ 40-302. Revocation or suspension of operators' permits — Procedure — New permit after revocation — Nonresidents — Penalty.

Section referred to in section. 40-1110.

§ 40-303. Nonresidents exempt from registration — Period of exemption.

(a) The owner or operator of any motor vehicle who is not a legal resident of the District, and who has complied with the laws of any State, Territory, or possession of the United States, or of a foreign country or political subdivision thereof, in respect of the registration of motor vehicles and the licensing of operators thereof, shall, subject to the provisions of this section, be exempt from compliance with section 40-301 and with any provision of law or regulation requiring the registration of motor vehicles or the display of identification tags in the District. This exemption shall not apply to any solid waste collection vehicle required to be licensed to engage in the collection or transportation of solid wastes in or through the District of Columbia under Title 8 of the District of Columbia Regulations. Such exemption shall cover the period immediately following the entrance of such owner or operator into the District equal to the period for which the Mayor of the District of Columbia or his designated agent has previously found that a similar privilege is extended to legal residents of the District by such State, Territory, or possession of the United States, or foreign country or political subdivision thereof. The Mayor or his designated agent shall from time to time ascertain such privileges and cause his findings to be promulgated. When the laws of any State, Territory, or possession of the United States or of a foreign country or of a political subdivision thereof contain a reciprocity provision similar to that hereinabove set forth, or the privilege extended to a legal resident of the District is for the remaining portion of the current District of Columbia registration year, then the owner of any motor vehicle who is a legal resident of such State, Territory, or possession of the United States, or of a foreign country or political subdivision thereof shall comply with the provisions of section 40-301 and with every other provision of law or regulation requiring the registration of motor vehicles and the display of identification tags in the District at the time of the expiration of the current motor vehicle registration issued to such owner by such State, Territory, or possession of the United States or a foreign country or political subdivision thereof,

unless the Mayor or his designated agent shall have entered into a reciprocal agreement or arrangement with the duly authorized representatives of such State, Territory, or possession of the United States or a foreign country or political subdivision thereof, further to limit or to extend the period of time during which the validity of the motor vehicle registration and identification tags of such State, Territory, or possession of the United States or foreign country or political subdivision thereof shall be recognized by the District. The Mayor or his designated agent is hereby authorized and empowered to enter into reciprocal agreements and arrangements as aforesaid. The following persons shall, with respect to the registration of motor vehicles and the licensing of operators thereof, if they have complied with the laws of the State, Territory, or possession from which they have been elected or appointed, or of which they are legal residents, be exempt during their respective terms of office or during the period of their employment as administrative employees from compliance with section 40-301 and with any other provision of law or regulation requiring the registration of motor vehicles and the display of identification tags in the District: Senators and Representatives in Congress; Delegates to Congress; Resident Commissioners; administrative employees of Senators, Representatives, Delegates, and Resident Commissioners who are legal residents of the State, Territory, or possession from which said Senators, Representatives, Delegates, and Resident Commissioners have been elected or appointed; and officers of the executive branch of the Government of the United States who are not domiciled within the District of Columbia, whose appointment to the office held by them was by the President of the United States, subject to confirmation by the Senate, and whose tenure of office is at the pleasure of the President.

* * * * *

(As amended Apr. 6, 1978, D.C. Law 2-69, § 5, 24 DCR 6800.)

Effect of Amendment
1978 — Act April 6, 1978, D.C. Law 2-69, amended section by adding the second sentence in subsection (a).
Legislative History of Law 2-69. See note to § 6-502.
Succession in Government. The District of Columbia Council and the office of Commissioner of the District of

Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CHAPTER 6.—REGULATION OF TRAFFIC

Sec.	Sec.
40-603. Council authorized to make regulations — Department of Vehicles and Traffic — Director — Congressional tags — Titling — Arterial and boulevard highways — Council may prescribe penalties — Publication of regulations — Signs on highways — Prosecutions — Excise tax imposed for	issuance of motor vehicle title certificates — Impoundment of motor vehicle for outstanding traffic violation notices. 40-603.1. Authority of Mayor to establish fees for storing impounded vehicles. 40-605. Speeding and reckless driving.

§ 40-603. Council authorized to make regulations — Department of Vehicles and Traffic — Director — Congressional tags — Titling — Arterial and boulevard highways — Council may prescribe penalties — Publication of regulations — Signs on highways — Prosecutions — Excise tax imposed for issuance of motor vehicle title certificates — Impoundment of motor vehicle for outstanding traffic violation notices.

* * * * *

(i) All prosecutions for violations of this chapter, excepting section 40-610, and this act or regulations made and promulgated under authority of this chapter shall be in the Superior Court of the District of Columbia upon information filed by the corporation counsel of the District of Columbia or any of his assistants except as provided in the District of Columbia Traffic Adjudication Act (D.C. Code, sec. 40-1101 et seq.).

* * * * *

(k) (1) Any unattended motor vehicle found parked at any time upon any public highway of the District of Columbia against which there are two (2) or more outstanding or otherwise unsettled traffic violation notices or notices of infraction or against which there have been issued two (2) or more warrants may, by or under the direction of an officer or member of the Metropolitan Police force or the United States Park Police force or an employee of the District of Columbia Department of Transportation, either by towing or otherwise, be removed or conveyed to and impounded in any place designated by the Mayor or immobilized in such manner as to prevent its operation: Except, that no such vehicle shall be immobilized by any means other than by the use of a device or other mechanism which will cause no damage to such vehicle unless it is moved while such device or mechanism is in place.

(2) It shall be the duty of the officer or member of the police force or employee of the District of Columbia Department of Transportation, removing or immobilizing such motor vehicle, or under whose direction such vehicle is removed or immobilized, to inform as soon as practicable the owner of an impounded or immobilized vehicle of the nature and circumstances of the prior unsettled traffic violation notices, notices of infractions or warrants, for which or on account of which such vehicle was impounded or immobilized. In any case involving immobilization of a vehicle pursuant to this subsection, such member or officer or employee shall cause to be placed on such vehicle, in a conspicuous manner, notice sufficient to warn any individual to the effect that such vehicle has been immobilized and that any attempt to move such vehicle might result in damage to such vehicle.

(3) The owner of such impounded or immobilized vehicle, or other duly authorized person, shall be permitted to repossess or to secure the release of the vehicle upon:

(A) (i) the depositing of the collateral required for his appearance in the Superior Court of the District of Columbia to answer for each violation; or

(ii) depositing the amount of the potential fine and penalty for each infraction, for which there is an outstanding or otherwise unsettled traffic violation notice, notice of infraction or warrant; and

(B) upon the payment of the fees required by paragraph (4) of this section.

(4) The owner of an immobilized vehicle shall be subject to a booting fee of twenty-five dollars (\$25) for such immobilization. The owner of an impounded motor vehicle shall be subject to a towing fee of fifty dollars (\$50) plus a fee for storage. The owner of an immobilized vehicle which was impounded shall be subject to a total fee of fifty dollars (\$50) plus a fee for storage. (As amended Sept. 12, 1978, D.C. Law 2-104, §§ 501, 601, 25 DCR 1275.)

Effect of Amendment.

1978 — Act Sept. 12, 1978, D.C. Law 2-104, amended section by inserting the exception at the end of subsection (i) and amended subsection (k) generally.

Emergency Act Amendments.

1978 — For temporary amendment of section, see secs. 501 and 601 of the District of Columbia Traffic Adjudication Emergency Act of 1978 (D.C. Act 2-216, July

1, 1978, 25 DCR 1329); Rental Vehicle Tax Reform Emergency Act of 1978 (D.C. Act 2-264, Aug. 16, 1978, 25 DCR 2431); and the Second Rental Vehicle Tax Reform Emergency Act of 1978 (D.C. Act 2-306, Nov. 27, 1978, 25 DCR 5529).

Legislative History of Law 2-104. See note to § 40-1101.

§ 40-603.1. Authority of Mayor to establish fees for storing impounded vehicles.

The Mayor of the District of Columbia is authorized to establish from time to time a reasonable fee to be charged for the cost of storing impounded vehicles. Such storage fee shall not be charged for the first twenty-four (24) hour period in which a vehicle is impounded. (Sept. 12, 1978, D.C. Law 2-104, § 505, 25 DCR 1275.)

Legislative History of Law 2-104. See note to § 40-1101.

§ 40-605. Speeding and reckless driving.

* * * * *

(d) Any individual violating any provision of this section, except where the offense constitutes reckless driving, shall be subject to a civil fine under the District of Columbia Traffic Adjudication Act (D.C. Code, sec. 40-1101 et seq.)
(As amended Sept. 12, 1978, D.C. Law 2-104, § 601, 25 DCR 1275.)

Effect of Amendment.
1978 — Act Sept. 12, 1978, D.C. Law 2-104, amended section by deleting everything after the words “reckless driving,” and inserting “shall be subject to a civil fine under the District of Columbia Traffic Adjudication Act.” in subsection (d).

Emergency Act Amendment.
1978 — For temporary enactment of section, see sec.

601 of the District of Columbia Traffic Adjudication Emergency Act of 1978 (D.C. Act 2-216, July 1, 1978, 25 DCR 1329).

Legislative History of Law 2-104. See note to § 40-1101.

Section referred to in section. 40-1110.

§ 40-606. Negligent homicide.

Section referred to in section. 40-1110.

NOTES TO DECISIONS

Cited in *Cartwright v. Hyatt Corp.* (1978, 460 F. Supp. 80).

§ 40-609. Fleeing from scene of accident — Driving under the influence of liquor or drugs.

Section referred to in section. 40-1110.

§ 40-610. Smoke screens.

Section referred to in section. 40-603.

CHAPTER 8.—REGULATION OF PARKING

Sec.
40-810. Parking restrictions — Vehicles impounded — Penalties.

§ 40-810. Parking restrictions — Vehicles impounded — Penalties.

It shall constitute an infraction within the meaning of the District of Columbia Traffic Adjudication Act (D.C. Code, sec. 40-1101 et seq.) to park, store, or leave any vehicle of any kind, whether attended or not, or for the owner of any vehicle of any kind to allow, permit, or suffer the same to be parked, stored, or left, whether attended or not, upon any public or private property in the District of Columbia, other than public highways, without the consent of the owner of such public or private property and the Mayor of the District of Columbia, and his designated agent or agents, are authorized to remove and impound any vehicle parked, stored, or left in violation of this chapter and to keep the same impounded until the owner thereof, or other duly authorized person, shall pay the Bureau of Traffic Adjudication, Department of Transportation, a towing fee of \$50 plus a fee for storage. The owner of such impounded vehicle, or duly authorized person, shall be permitted to repossess the same upon depositing the collateral required for his appearance in the Superior Court of the District of Columbia to answer for each outstanding violation, or depositing the amount of the potential fine and penalty for each infraction, for which there is an outstanding or otherwise unsettled traffic violation notice, notice of infraction, or warrant. Whoever violates the provisions of section 40-811 shall be punished by a fine of not more than \$25. In any administrative adjudication under this section or prosecution under section 40-811, proof that a vehicle was parked, stored, or left on public or private property shall be prima facie evidence that the vehicle was so parked, stored, or left without the consent of the owner of such public or private property. (Jan. 15, 1942, 56 Stat. 5,

ch. 4, § 1; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, Pub. L. 91-358, title I, § 155(a), 84 Stat. 570; Sept. 12, 1978, D.C. Law 2-104, § 504, 25 DCR 1275.)

Effect of Amendment.
1978 — Act Sept. 12, 1978, D.C. Law 2-104, amended section generally.
Emergency Act Amendment.
1978 — For temporary amendment of section, see sec.

504 of the District of Columbia Traffic Adjudication Emergency Act of 1978 (D.C. Act 2-216, July 1, 1978, 25 DCR 1329).
Legislative History of Law 2-104. See note to § 40-1101.

§ 40-811. Same — United States public buildings and property — Regulations — Penalties.

Section referred to in section. 40-810.

CHAPTER 9.—INSTALLMENT SALES OF MOTOR VEHICLES

§ 40-902. Maximum finance charges — Computation — Proportionate adjustments — Investigation of economic conditions to determine finance charges — Regulations — Classification of parties — Waiver.

NOTES TO DECISIONS

Cited in *Franklin Inv. Co. v. Smith* (D.C. 1978, 383 A.2d 355).

CHAPTER 11.—TRAFFIC ADJUDICATION

Subchapter I.—Purposes; Definitions; Establishment; Hearing Examiners; Sanctions; Time Computations; Regulations		Subchapter III.—Parking, Standing, Stopping and Pedestrian Infractions	
Sec.		Sec.	
40-1101. Statement of purposes.		40-1115. Applicability.	
40-1102. Definitions.		40-1116. Exceptions for serious offenders.	
40-1103. Establishment.		40-1117. Notice of infraction.	
40-1104. Hearing examiners.		40-1118. Civil liability.	
40-1105. Monetary sanctions.		40-1119. Answer.	
40-1106. Time computation.		40-1120. Hearing.	
40-1107. Regulations.			
40-1108. Report to Council.		Subchapter IV.—Administrative Review	
		40-1121. Appeals Board.	
		40-1122. Right of appeal.	
		40-1123. Scope of review.	
		40-1124. Time limitation.	
		40-1125. Judicial review.	
Subchapter II.—Moving Infractions			
40-1109. Applicability.			
40-1110. Exceptions.			
40-1111. Exception for serious offenders.		Subchapter V.—Separability; Effective Date	
40-1112. Notice of infraction.		40-1126. Separability.	
40-1113. Answer.		40-1127. Effective date.	
40-1114. Hearing.			

Subchapter I.—Purposes; Definitions; Establishment; Hearing Examiners; Sanctions; Time Computations; Regulations

§ 40-1101. Statement of purposes.

It is the intent of the Council of the District of Columbia (hereinafter referred to as the “Council”) in the adoption of this chapter to decriminalize and to provide for the administrative adjudication of certain violations of Title 32 of the D.C. Rules and Regulations (Motor Vehicle Regulations for the District of Columbia), and certain offenses codified in Title 40 of the District of Columbia Code, in the Highways and Traffic Regulations of the District of Columbia, and in Chapter III of Title 14 of the D.C. Rules and Regulations (relating to the operation of taxicabs),

and to provide for the civilian enforcement of parking infractions, and thereby to establish a uniform and more expeditious system and continue to assure an equitable system for the disposition of traffic offenses. (Sept. 12, 1978, D.C. Law 2-104, § 101, 25 DCR 1275.)

Emergency Act Amendment.

1978 — For temporary enactment of chapter, see the District of Columbia Traffic Adjudication Emergency Act of 1978 (D.C. Act 2-216, July 1, 1978, 25 DCR 1329).

Legislative History of Law 2-104. Law 2-104 was introduced in Council and assigned Bill No. 2-195, which was referred to the Committee on the Judiciary, with title 5 of said act being referred to the Committee on Transportation and Environmental Affairs. The Bill was

adopted on first and second readings on June 13, 1978 and June 27, 1978, respectively. Signed by the Mayor on July 1, 1978, it was assigned Act No. 2-215 and transmitted to both Houses of Congress for its review.

Short title. The first section of the act of Sept. 12, 1978, D.C. Law 2-104, 25 DCR 1275, provided “That this act may be cited as the ‘District of Columbia Traffic Adjudication Act of 1978.’ ”

Section referred to in sections. 40-301, 40-603, 40-605.

§ 40-1102. Definitions.

For the purpose of this chapter:

- (a) The term “Department” means the District of Columbia Department of Transportation.
- (b) The term “Director” means the Director of the District of Columbia Department of Transportation.
- (c) The term “District” means the District of Columbia.
- (d) The term “infraction” means any conduct subject to administrative adjudication under the provisions of this chapter and with respect to which the Corporation Counsel does not commence a proceeding in the Superior Court of the District of Columbia.
- (e) The term “lessor” means any owner of a vehicle engaged in the business of renting or leasing vehicles to be used or operated in the District.
- (f) The term “operator” means (1) any person, corporation, firm, agency, association, organization, federal, state or local governmental agency in the business of renting or leasing vehicles to be used or operated in the District; (2) an owner who operates his own vehicle; or (3) a person who operates a vehicle owned by another.
- (g) The term “owner” means (1) any person, corporation, firm, agency, association, organization, federal, state or local governmental agency or other authority or other entity having the property of or title to a vehicle used or operated in the District; or (2) any registrant of a vehicle used or operated in the District; or (3) any person, corporation, firm, agency, association, organization, federal, state or local government agency or authority or other entity in the business of renting or leasing vehicles to be used or operated in the District. (Sept. 12, 1978, D.C. Law 2-104, § 102, 25 DCR 1275.)

Legislative History of Law 2-104. See note to § 40-1101.

§ 40-1103. Establishment.

There are hereby established within the Department of Transportation of the District of Columbia a Bureau of Traffic Adjudication which shall be headed by an Assistant Director of Transportation for Administrative Adjudication and a Bureau of Parking and Enforcement which shall be headed by an Assistant Director for Parking and Enforcement. (Sept. 12, 1978, D.C. Law 2-104, § 103, 25 DCR 1275.)

Legislative History of Law 2-104. See note to § 40-1101.

§ 40-1104. Hearing examiners.

- (a) The Director shall appoint and prescribe the duties of a chief hearing examiner and such other hearing examiners as are necessary to implement the provisions of this chapter. No person may be employed as a hearing examiner for more than five (5) years.
- (b) The hearing examiners, in addition to the powers granted them by Chapter IX of Title 32

of the D.C. Rules and Regulations, shall have the following powers:

(1) to determine in prescribed cases whether a member of the Metropolitan Police Department or the Department of Transportation shall be called as a witness in an adjudication pursuant to subchapters II and III of this chapter;

(2) to impose sanctions for infractions under subchapter II of this chapter including: (A) monetary fines and penalties; (B) the required attendance at traffic school; and (C) the suspension of operators' permits pending the payment of monetary fines and penalties or the successful completion of traffic school;

(3) to impose monetary fines and penalties for infractions under subchapter III of this chapter;

(4) to permit the payment of monetary fines and penalties in excess of fifty dollars (\$50.00) in monthly installments over a period not greater than six (6) months. In the case of a moving infraction, the hearing examiner may suspend the respondent's operators' permit if the fines and penalties have not been paid upon termination of the installment period or if the respondent defaults on two (2) consecutive installments.

Such suspension shall take effect upon service of a notice of suspension upon the respondent, by personal service, by leaving such notice at his recorded address with a person of suitable age and discretion residing therein or by certified mail sent to his recorded address and shall remain in effect until the fines and penalties are paid: Provided, that refusal to accept personal service or delivery of certified mail shall be the equivalent of personal service or receipt of certified mail, if immediately upon advice of such refusal, the Director causes a copy of the notice to be sent to the respondent by regular mail with a statement that, despite such refusal, the suspension will go into effect five (5) days from the date the notice was sent by regular mail; and

(5) to suspend the imposition of traffic violation points (other than those based upon offenses listed in section 40-1110) conditioned upon (A) good driving behavior (B) the successful completion of traffic school or other rehabilitative measures.

(Sept. 12, 1978, D.C. Law 2-104, § 104, 25 DCR 1275.)

Legislative History of Law 2-104. See note to § 40-1101.

§ 40-1105. Monetary sanctions.

(a) The maximum monetary sanctions that may be imposed under this chapter shall be as follows:

(1) The civil fine for an infraction shall be an amount equal to the collateral or bond established for the offense, equivalent to such infraction, by the Board of Judges of the Superior Court of the District of Columbia on the date immediately preceding the effective date of this chapter. The Mayor may modify this schedule of fines thereafter by order. Such order shall become effective at the expiration of forty-five (45) days unless the Council shall, during such period, adopt a resolution disapproving or modifying such Mayor's order. If the Council adopts a resolution modifying such order, the order shall take effect as so modified.

(2) In addition to the civil fine, the following penalties may be imposed:

(A) In the case of a person receiving a Notice of Infraction who fails to answer such notice within the time specified by sections 40-1113(d) or 40-1119(d), a penalty equal to the amount of the civil fine;

(B) In the case of a person receiving a Notice of Infraction and fails to answer such notice by the close of business on the date set for the hearing or who answers but fails without good cause to appear at such hearing, with respect to infractions under subchapter II of this chapter, a penalty equal to twice the amount of the civil fine and, with respect to infractions under subchapter III of this chapter, a penalty equal to the amount of the civil fine plus five dollars (\$5.00).

(b) A respondent may pay such fines and penalties by use of credit cards approved by the Director. The Director may pay a reasonable percentage of monies collected to private agencies

for the collection of fines, penalties and fees. (Sept. 12, 1978, D.C. Law 2-104, § 105, 25 DCR 1275.)

Legislative History of Law 2-104. See note to § 40-1101. **Section referred to in sections.** 40-1113, 40-1114, 40-1119, 40-1120.

§ 40-1106. Time computation.

In computing any period of time prescribed or allowed by this chapter, the day of the act, event or default from which the period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday or legal holiday in which event the period runs until the end of the next day which is not a Saturday, Sunday or legal holiday. When the period of time prescribed or allowed is less than seven (7) days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation. (Sept. 12, 1978, D.C. Law 2-104, § 106, 25 DCR 1275.)

Legislative History of Law 2-104. See note to § 40-1101.

§ 40-1107. Regulations.

The Director is authorized to promulgate regulations necessary to carry out the purposes of this chapter. (Sept. 12, 1978, D.C. Law 2-104, § 107, 25 DCR 1275.)

Legislative History of Law 2-104. See note to § 40-1101.

Section referred to in section. 40-1127.

§ 40-1108. Report to Council.

By June 30th of each year, the Mayor shall submit to the Council a report on parking and traffic enforcement for the previous calendar year. The report shall include, but not be limited to, the following:

- (a) the number of persons hired as hearing examiners;
 - (1) the level of compensation for each hearing examiner;
 - (2) the length of time each hearing examiner has served in that capacity; and
 - (3) the qualifications for hearing examiners;
- (b) the number of Notices of Infraction issued;
 - (1) the number of Notices of Infraction issued for moving infractions;
 - (2) the number of Notices of Infraction issued for parking, standing, stopping and pedestrian infractions; and
 - (3) the number of Notices of Infraction issued by each agency authorized to issue Notices of Infraction;
- (c) the number of answers filed for moving infractions;
 - (1) the number of “admit” answers filed for moving infractions;
 - (A) the number of hearings held for respondents who admit the commission of moving infractions; and
 - (B) the number of suspensions and revocations of respondents who admit the commission of moving infractions;
 - (2) the number of “admit with explanation” answers filed for moving infractions; the number of suspensions and revocations of respondents who admit with explanation the commission of a moving infraction;
 - (3) the number of “deny” answers filed for moving infractions;
 - (A) the number of determinations of liability of respondents who deny the commission of moving infractions;
 - (B) the number of dismissals of respondents who deny the commission of moving infractions; and

(C) the number of suspensions and revocations of respondents who deny the commission of moving infractions;

(4) the number of suspensions for failure to answer Notices of Infraction; and

(5) the number of suspensions for failure to appear at a hearing;

(d) the number of answers filed for parking, standing, stopping and pedestrian infractions;

(1) the number of "admit" answers filed for parking, standing, stopping and pedestrian infractions;

(2) the number of "admit with explanation" answers filed for parking, standing, stopping and pedestrian infractions; and

(3) the number of "deny" answers filed for parking, standing, stopping and pedestrian infractions;

(A) the number of determinations of liability of respondents who deny the commission of parking, standing, stopping and pedestrian infractions; and

(B) the number of dismissals of respondents who deny the commission of parking, standing, stopping and pedestrian infractions;

(e) the number of Notices of Infraction for which sanctions are imposed;

(1) the number of Notices of Infraction for which a civil fine is imposed;

(2) the number of Notices of Infraction for which a penalty is imposed; and

(3) the number of Notices of Infraction for which attendance at traffic school is required;

(f) the number of Notices of Infraction issued to lessors covered under section 40-1118;

(1) the penalties and fines imposed for infractions under section 40-1118;

(2) the penalties and fines actually paid under section 40-1118;

(3) the number of outstanding infractions under section 40-1118; and

(4) the amount of fines and penalties outstanding under section 40-1118;

(g) the number of appeals filed with the Appeals Boards;

(1) the number of decisions set aside by Appeals Boards;

(2) the number of decisions affirmed by Appeals Boards;

(3) the list of attorneys available for service on Appeals Boards;

(4) the list of citizens available for service on Appeals Boards; and

(5) a list of each Appeals Board appointed by the Director;

(h) the number of appeals filed with the Superior Court of the District of Columbia;

(1) the number of decisions set aside by the Superior Court of the District of Columbia;

and

(2) the number of decisions affirmed by the Superior Court of the District of Columbia;

(i) the number of appeals filed with the District of Columbia Court of Appeals;

(1) the number of decisions set aside by the District of Columbia Court of Appeals; and

(2) the number of decisions affirmed by the District of Columbia Court of Appeals;

(j) the number of vehicles towed and booted;

(1) the number of vehicles towed;

(2) the number of vehicles booted;

(3) the average cost of each tow; and

(4) the average cost of each booting;

(k) the total revenues generated by this chapter;

(1) the total collected in fines and penalties;

(2) the total collected in towing fees; and

(3) the total collected in booting fees.

(Sept. 12, 1978, D.C. Law 2-104, § 108, 25 DCR 1275.)

*Subchapter II. — Moving Infractions***§ 40-1109. Applicability.**

Notwithstanding any other provision of law, all violations of statutes, regulations, executive orders or rules relating to the operation of any vehicle in the District, except those violations covered by subchapter III of this chapter or those violations excepted by sections 40-1110 and 40-1111, shall be processed and adjudicated pursuant to the provisions of this subchapter. (Sept. 12, 1978, D.C. Law 2-104, § 201, 25 DCR 1275.)

Legislative History of Law 2-104. See note to § 40-1101.

§ 40-1110. Exceptions.

The provisions of this subchapter shall not apply to the following violations, which shall continue to be prosecuted as criminal offenses:

(a) any felony or any misdemeanor for which the provision prohibiting the same is not codified in:

- (1) Title 40 of the District of Columbia Code;
- (2) Title 14 of the D.C. Rules and Regulations;
- (3) Title 32 of the D.C. Rules and Regulations; or
- (4) Highways and Traffic Regulations of the District of Columbia:

Provided, that upon the Mayor complying with section 1-1602, and transmitting to the Council a complete and accurate draft of a District of Columbia Municipal Code, this subsection shall stand amended upon publication of such Municipal Code to substitute in items (2), (3) and (4) of this subsection, the appropriate titles of such Municipal Code;

- (b) violation of section 40-605 (b);
 - (c) violation of section 40-606;
 - (d) violation of section 40-609 (a);
 - (e) violation of section 40-609 (b);
 - (f) violation of section 40-610;
 - (g) violation of section 40-104;
 - (h) violation of section 40-301 (d);
 - (i) violation of section 40-302 (d);
 - (j) violation of Commissioners' Order No. 57-1086, dated June 11, 1957 (Highway and Traffic Regulations, sec. 22 (d)) (driving at a speed greater than thirty (30) miles per hour in excess of the legal speed limit);
 - (k) violation of section 2.401 (1) of Title 32 of the D.C. Rules and Regulations (failure or refusal to surrender an operator's license which has been suspended, revoked or cancelled);
 - (l) commission of any offense contained in Chapters VII or VIII of Title 32 of the D.C. Rules and Regulations;
 - (m) violation of section 11.701 (a) of Title 32 of the D.C. Rules and Regulations (tampering with a locked or secured bicycle);
 - (n) violation of section 2.501 of Title 32 of the D.C. Rules and Regulations (acting as a driving school instructor without a license);
 - (o) violation of section 2.801 of Title 32 of the D.C. Rules and Regulations (operating a school bus without a permit);
 - (p) violation of section 5.201 of Title 32 of the D.C. Rules and Regulations (carrying on or conducting the business of a dealer without a registration); and
 - (q) violation of subsection (d) of Commissioners' Order No. 66-535, dated April 21, 1966 (Highways and Traffic Regulations, sec. 87 (d)) (unauthorized use of emergency parking permits).
- (Sept. 12, 1978, D.C. Law 2-104, § 202, 25 DCR 1275.)

Legislative History of Law 2-104. See note to § 40-1101.

Section referred to in sections. 40-1104, 40-1109.

§ 40-1111. Exception for serious offenders.

(a) Except as provided in subsection (b) of this section, the provisions of this subchapter shall not apply to a person alleged to have committed an infraction who, during the eighteen (18) month period immediately preceding the date of the infraction, has been assessed twelve (12) or more traffic points pursuant to the section 2.305 of Title 32 of the D.C. Rules and Regulations. Such person shall be subject to criminal prosecution by the Corporation Counsel for such offense in the Superior Court of the District of Columbia and, upon conviction, shall be punished by a fine not to exceed three hundred dollars (\$300) or imprisonment of up to ten (10) days, or both, in addition to any penalties imposed for driving after suspension or revocation.

(b) The Director shall promptly inform the Corporation Counsel of an infraction by any person who has accumulated twelve (12) or more traffic points pursuant to subsection (a) of this section. If the Corporation Counsel asserts jurisdiction over such person, he may be prosecuted without respect to the provisions of this chapter: Provided, that if the Corporation Counsel affirmatively declines to take jurisdiction or does not assert jurisdiction over such offender within fifteen (15) calendar days of his receipt of notification by the Director of a violation by such person, such violation shall be adjudicated in the manner of civil infractions pursuant to this subchapter.

(c) A person, over whom the Corporation Counsel asserts jurisdiction pursuant to this section, shall be notified that his infraction shall be subject to criminal prosecution. Such notification shall be sent by the Corporation Counsel by certified mail directed to the recorded address of such person. No actions or statements of the respondent made in compliance or attempted compliance with this chapter before the receipt of such notice, including but not limited to admissions or admissions with explanation, shall be admissible in any such criminal proceeding. (Sept. 12, 1978, D.C. Law 2-104, § 203, 25 DCR 1275.)

Legislative History of Law 2-104. See note to § 40-1101.

Section referred to in section. 40-1109.

§ 40-1112. Notice of infraction.

(a) The Notice of Infraction shall be the summons and complaint for the purposes of this subchapter. The Director shall prescribe the form of the Notice of Infraction and shall establish procedures for the proper administrative controls over the dispersal thereof. The Notice of Infraction may be the same as the uniform traffic violation notice.

(b) The Notice of Infraction shall contain information advising the person to whom it is issued of the manner in which and the time within which he may answer the infraction alleged in the notice.

(c) The Notice of Infraction shall advise the person to whom it is issued that his failure to answer the Notice of Infraction within fifteen (15) calendar days from the date of issuance or greater period established by the Director by regulation shall by operation of law result in a suspension of his District operators' permit or, in the case of a person who is not a resident of the District, his privilege to drive within the District, pending his compliance with section 40-1113.

(d) If a hearing examiner determines that a Notice of Infraction, is defective on its face, he shall enter an order dismissing the Notice of Infraction and promptly notify the person to whom it was issued. (Sept. 12, 1978, D.C. Law 2-104, § 204, 25 DCR 1275.)

Legislative History of Law 2-104. See note to § 40-1101.

§ 40-1113. Answer.

(a) In answer to a Notice of Infraction, a person to whom such notice was issued may:

(1) admit his commission of the infraction;

(2) admit his commission of the infraction with an explanation which the hearing examiner may take into account in the imposition of a sanction for the infraction; or

(3) deny his commission of the infraction.

No other response shall constitute an answer for purposes of this subchapter: Except, that a person who appears before a hearing examiner and refuses to enter an answer admitting, admitting with explanation or denying the commission of the infraction shall be deemed to have denied the infraction.

(b) Except as provided in subsections (c) and (d) of this section, a person to whom a Notice of Infraction has been issued may answer by personal appearance or by mail. Answers by telephone may be permitted by regulation.

(c) A person admitting that an infraction occurred shall, at the same time he submits his answer, pay the civil fine and any additional penalties established pursuant to section 40-1105, as may be due for failure to answer within the time required by subsection (d) of this section. In such case, such person need not appear at the hearing, unless the commission of such infraction would subject him to the suspension or revocation of his license or privilege to drive pursuant to Chapter II of Title 32 of the D.C. Rules and Regulations in which case he shall answer in person.

(d)(1) A person to whom a Notice of Infraction has been issued must answer within fifteen (15) calendar days of the date the notice was issued or within a greater period of time as prescribed by the Director by regulation. If a person fails to answer such notice within this period, such person's operators' permit, in the case of a resident of the District or other person with a District operators' permit, or such person's privilege to drive within the District, in the case of a nonresident or resident licensed in another jurisdiction, shall by operation of law be suspended until such person answers the notice.

(2) A notice of such suspension shall be personally served upon the respondent or left at his recorded address with a person of suitable age and discretion residing therein or shall be mailed by certified mail to him at his recorded address. Such suspension shall take effect five (5) days after the personal service or the receipt of certified mail: Provided, that refusal to accept personal service or delivery of certified mail shall be the equivalent of personal service or receipt of certified mail, if, immediately upon advice of such refusal, the Director causes a copy of the notice to be sent to the respondent by regular mail with a statement that, despite such refusal, the suspension will go into effect five (5) days from the date the notice was sent by regular mail.

(3) A person who fails to answer within the prescribed period referred to in subsection (a) (1) of this section shall answer by personal appearance unless permitted by regulation by the Director to answer by other means.

(Sept. 12, 1978, D.C. Law 2-104, § 205, 25 DCR 1275.)

Legislative History of Law 2-104. See note to **Section referred to in sections.** 40-1105, 40-1112, § 40-1101. 40-1114.

§ 40-1114. Hearing.

(a) Each hearing for the adjudication of a traffic infraction pursuant to this subchapter shall be held before a hearing examiner in accordance with Chapter IX of Title 32 of the D.C. Rules and Regulations except as provided by this chapter. The burden of proof shall be on the District and no infraction shall be established except by clear and convincing evidence.

(b) If a person to whom a Notice of Infraction has been issued fails to appear at a hearing where he is required to do so, the hearing examiner may suspend that person's license or privilege to drive until such person appears at a hearing or pays a civil fine pursuant to section 40-1113 (c). Such suspension shall take effect and notice shall be given in accordance with section 40-1113 (d).

(c) The police officer issuing the Notice of Infraction shall appear at the hearing of a case wherein the respondent has denied the commission of the infraction. The police officer issuing the Notice of Infraction shall not be required to attend the hearing of a case wherein the respondent has admitted or has admitted with explanation the commission of the infraction unless (1) the respondent requests the presence of the officer at the same time that he answers to the infraction and the hearing examiner determines that the testimony of such officer would assist his determination of the appropriate sanction to impose; or (2) the hearing examiner decides to require such presence.

(d) After due consideration of the evidence and arguments presented, the hearing examiner shall determine whether the infraction has been established. Where the infraction is not established, an order dismissing the charge shall be entered. Where a determination is made that an infraction has been established or where an answer admitting the commission of the infraction or admitting the commission of the infraction with explanation has been received, an appropriate order shall be entered in the Department's records.

(e) An order, entered pursuant to a determination that an infraction has been established or pursuant to the receipt of an answer admitting the infraction or admitting the infraction with explanation, shall be civil in nature but shall be treated as an adjudication that an infraction has been committed for the purposes of this chapter and for the purposes of the assessment of traffic points pursuant to Chapter II of Title 32 of the D.C. Rules and Regulations.

(f) The hearing examiner may impose as sanctions for such infraction:

- (1) a civil fine and applicable penalties as prescribed pursuant to section 40-1105;
- (2) the required completion of traffic school; or
- (3) both of the preceding sanctions.

(g) In making the determination whether an infraction is established, the hearing examiner shall not consider the traffic record of the respondent, unless so requested by the respondent. However, the hearing examiner shall consider the respondent's traffic record in determining the appropriate sanction to impose.

(h) The hearing examiner may stay the imposition of any sanction imposed pending administrative review pursuant to Part F of Chapter IX of Title 32 of the D.C. Rules and Regulations and subchapter IV of this chapter: Provided, that the respondent posts a security in the amount of the civil fine and any penalties and, in the case where the sanction includes the suspension or revocation of his license to drive, surrenders his operator's permit to the Bureau of Traffic Adjudication. If a respondent surrenders his operator's permit, a temporary permit shall be issued pursuant to the standards set forth in section 9.202 (b) (2) of Title 32 of the D.C. Rules and Regulations.

(i) All civil fines and other monies collected pursuant to the provisions of this title shall be paid into the general fund of the District. (Sept. 12, 1978, D.C. Law 2-104, § 206, 25 DCR 1275.)

Legislative History of Law 2-104. See note to § 40-1101.

Subchapter III.—Parking, Standing, Stopping and Pedestrian Infractions

§ 40-1115. Applicability.

Notwithstanding any other provision of law, all violations of statutes, regulations, executive orders or rules relating to parking, standing, stopping or pedestrian offenses within the District shall be processed and adjudicated pursuant to the provisions of this subchapter, except as provided in section 40-1116. (Sept. 12, 1978, D.C. Law 2-104, § 301, 25 DCR 1275.)

Legislative History of Law 2-104. See note to § 40-1101.

§ 40-1116. Exceptions for serious offenders.

(a) Except as provided in subsection (b) of this section, the provisions of this subchapter shall not apply to a person alleged to have committed a parking, standing, or stopping infraction who, during the eighteen (18) months immediately preceding the date of the infraction, has been assessed in excess of seven hundred and fifty dollars (\$750) in fines, including any penalties imposed by law for failure to timely pay such fines. Such person shall be subject to criminal prosecution by the Corporation Counsel for such offense in the Superior Court of the District of Columbia and, upon conviction, shall be punished by a fine not to exceed three hundred dollars (\$300) or imprisonment of up to ten (10) days, or both, for each infraction.

(b) The Director shall promptly inform the Corporation Counsel of an infraction by any person who has accumulated in excess of seven hundred and fifty dollars (\$750) in fines pursuant to subsection (a) of this section. If the Corporation Counsel asserts jurisdiction over such person, he may be prosecuted without respect to the provisions of this chapter: Provided, that if the Corporation Counsel affirmatively declines to take jurisdiction or does not assert jurisdiction over such offender within fifteen (15) calendar days of his receipt of notification by the Director of a violation by such person, such violation shall be adjudicated as a civil infraction pursuant to this subchapter.

(c) A person over whom the Corporation Counsel asserts jurisdiction pursuant to this section shall be notified that his infraction shall be treated as a criminal matter. Such notification shall be sent by the Corporation Counsel by certified mail directed to the recorded address of such person. No actions or statements of the respondent made in compliance or attempted compliance with this chapter before the receipt of such notice, including but not limited to admissions or admissions with explanation, shall be admissible in any such criminal proceeding. (Sept. 12, 1978, D.C. Law 2-104, § 302, 25 DCR 1275.)

Legislative History of Law 2-104. See note to § 40-1101.
Section referred to in section. 40-1115.

§ 40-1117. Notice of infraction.

(a) The Notice of Infraction shall be the summons and complaint for the purposes of this subchapter. The Director shall prescribe the form of the Notice of Infraction and shall establish procedures for the proper administrative controls over the dispersal thereof. The Notice of Infraction may be the same as the uniform traffic violation notice.

(b) The Notice of Infraction shall contain information advising the person to whom it is issued of the manner in which and the time within which he may answer to the infraction alleged in the notice. Such notice shall also contain a warning to advise the person cited that failure to answer in the manner and time provided shall result in additional monetary penalties and that failure to appear at the hearing shall be deemed an admission of liability and that a default judgment may be entered thereon. A duplicate of each Notice of Infraction shall be served on the person to whom it is issued as provided in subsection (c) of this section. The original or a fascimile thereof shall be filed with the Department and retained by the Department and shall be deemed a record kept in the ordinary course of business and shall be prima facie evidence of the facts contained therein.

(c) A Notice of Infraction shall be served personally upon the operator of a vehicle who is present at the time of service and his name, together with the plate designation and the plate type as shown by the registration plates of said vehicle and the make or model of such vehicle, shall be inserted therein. If the operator is not present, the Notice of Infraction shall be served upon the owner of the vehicle by affixing such notice to such vehicle in a conspicuous place, by inserting the word “owner” in the space provided for identification of such person and by noting the plate designation and plate type as shown by the registration plates of such vehicle together with the make or model of such vehicle. Service of the Notice of Infraction or a duplicate thereof by affixation, as herein provided, shall have the same force and effect and shall be

subject to the same penalties for the disregard thereof as though the Notice of Infraction was personally served on the owner and operator of the vehicle.

(d) For purposes of this section, an operator of a vehicle who is not the owner thereof but who uses or operates such vehicle with the permission of the owner, express or implied, shall be deemed to be the agent of such owner to receive Notices of Infraction, whether personally served on such operator or served by affixation, and service made in either manner shall also be deemed to be lawful service upon such owner.

(e) If a hearing examiner determines that a Notice of Infraction is defective on its face, he shall enter an order dismissing the Notice of Infraction and promptly notify the person to whom it was issued. (Sept. 12, 1978, D.C. Law 2-104, § 303, 25 DCR 1275.)

Legislative History of Law 2-104. See note to § 40-1101.

§ 40-1118. Civil liability.

(a) The operator of a vehicle shall be primarily liable for the civil penalties imposed pursuant to this subchapter. Subject to the provisions of subsections (b) and (c) of this section, the owner of the vehicle, even if not the operator thereof, shall also be liable therefor, unless he can show that such vehicle was used without his permission, express or implied. An owner who pays any civil fine or penalties pursuant to this subchapter shall have the right to recover same from the operator and shall have a cause of action against the operator of the vehicle for such amount paid.

(b) The lessor of a vehicle shall not be liable for fines or penalties imposed for an infraction pursuant to this subchapter if:

(1) prior to the infraction, the lessor has filed with the Bureau the license plate number and state or registration of the vehicle to which the Notice of Infraction was issued; and

(2) within thirty (30) days after receiving notice from the Bureau of the date and time of an infraction, as well as other information contained in the original Notice of Infraction, the lessor submits to the Bureau the correct name and address of the person to whom the vehicle identified in the Notice of Infraction was rented or leased at the time of the infraction and the lessor notifies such person by mail of the Notice of Infraction.

(c) Where the lessor has paid any fine or penalty for which he is liable and the Bureau thereafter collects from the person to whom the vehicle was rented or leased the amount of the scheduled fine and penalties owed by such person, or any portion thereof, the lessor shall be entitled to reimbursement from the Bureau of the amount of the fines and penalties paid by the lessor, less the Bureau's cost of collection.

(d) Where the lessor is liable for an infraction, he shall not be liable for penalties in excess of the standard civil fine unless the lessor fails to answer within fifteen (15) calendar days of his actual receipt of the Notice of Infraction. (Sept. 12, 1978, D.C. Law 2-104, § 304, 25 DCR 1275.)

Legislative History of Law 2-104. See note to § 40-1101.

Section referred to in section. 40-1108.

§ 40-1119. Answer.

(a) In answer to a Notice of Infraction, a person to whom such notice was issued may:

(1) admit, by the payment of the appropriate civil fine, the commission of the infraction;

(2) admit the commission of the infraction with an explanation which the hearing examiner may take into account in the imposition of a civil fine for the infraction; or

(3) deny liability for the infraction.

No other response shall constitute an answer for purposes of this subchapter: Except, that a person who appears before a hearing examiner and refuses to enter an answer admitting, admitting with explanation or denying the commission of the infraction shall be deemed to have denied the infraction.

- (b) A person to whom a Notice of Infraction has been issued may answer by personal appearance or by mail. Answers by telephone may be permitted by regulation.
- (c) A person admitting the commission of an infraction shall, at the same time he submits his answer, pay the civil fine and any additional penalties, established pursuant to section 40-1105, as may be due for failure to answer within the time required by subsection (d) of this section without appearing at the hearing.
- (d) A person to whom a Notice of Infraction has been issued shall answer within fifteen (15) calendar days of the date the notice was issued. Failure to answer within the prescribed period may result in imposition of monetary penalties established by section 40-1105, in addition to the potential civil fine for the infraction.
- (e) Any person who desires the presence at the hearing of the police officer or the Department of Transportation employee who served the Notice of Infraction on such person must so demand at the same time such person answers to the infraction. (Sept. 12, 1978, D.C. Law 2-104, § 305, 25 DCR 1275.)

Legislative History of Law 2-104. See note to § 40-1101.
Section referred to in sections. 40-1105, 40-1120.

§ 40-1120. Hearing.

- (a) Each hearing for the adjudication of a traffic infraction pursuant to this subchapter shall be held before a hearing examiner in accordance with Chapter IX of Title 32 of the D.C. Rules and Regulations except as provided in this chapter.
- (b) The burden of proof shall be upon the District, and no infraction may be established except upon proof by a preponderance of the evidence.
- (c) The police officer or Department employee issuing the Notice of Infraction shall appear at the hearing of a case wherein the respondent has denied that the infraction occurred by his commission: Provided, that demand therefor has been made pursuant to section 40-1119 (e). The police officer or Department employee issuing the Notice of Infraction shall not be required to attend the hearing of a case wherein the respondent has admitted or admitted with explanation that the infraction occurred by his commission (1) unless the respondent requests the presence of the officer or employee, as the case may be, at the same time he answers to the infraction and the hearing examiner determines that the testimony of such officer would assist his determination of the appropriate sanction to impose or (2) unless the hearing examiner decides to require such presence.
- (d) If a person to whom a Notice of Infraction has been issued fails to appear at a hearing where he is required to do so, the hearing examiner may enter a judgment by default sustaining the charges, fix the appropriate fine and assess appropriate penalties, if any, if the infraction is established by a preponderance of the evidence. Before such a default judgment is entered, the Department shall notify the respondent by regular mail that an infraction is outstanding, that a default judgment is pending and that such judgment may be avoided by entering an answer or making an appearance within thirty (30) days of such notice. Such notice shall be mailed to the respondent's recorded address.
- (e) A judgment by default may be vacated by the hearing examiner within one (1) year of its entry only upon written application setting forth (1) a sufficient defense to the charge and (2) excusable neglect as to the respondent's failure to attend the hearing.
- (f) After due consideration of the evidence and arguments, the hearing examiner shall determine whether the infraction has been established. Where the infraction is not established, an order dismissing the charges shall be entered. Where a determination is made that an infraction has been established or where an answer admitting the commission of the infraction or admitting the commission of the infraction with explanation has been received, an appropriate order shall be entered in the Department's records.
- (g) The hearing examiner may impose a civil fine for violation of infractions to which this

subchapter is applicable up to and including an amount prescribed by section 40-1105 exclusive of fees and charges imposed for the towing or booting of a vehicle or additional penalties imposed for failure to answer to such infraction in a timely manner.

(h) All civil fines and other monies collected pursuant to the provisions of this subchapter shall be paid into the general fund of the District. (Sept. 12, 1978, D.C. Law 2-104, § 306, 25 DCR 1275).

Legislative History of Law 2-104. See note to § 40-1101.

Subchapter IV.—Administrative Review

§ 40-1121. Appeals Board.

The Director shall establish Appeals Boards to consider and determine appeals brought by persons aggrieved by decisions of hearing examiners. The Director shall appoint to each Appeals Board one (1) employee of the Department of Transportation, one (1) attorney from a list of practicing and willing attorneys submitted by the District of Columbia Bar or, if no such list is submitted, from a list compiled by the Director and one (1) citizen from a list of willing citizens compiled and kept by the Director. In compiling and keeping such list of citizens, the Director shall consult with the various Advisory Neighborhood Commissions. The Director shall appoint a chairperson for each Appeals Board. Members of Appeals Boards who are not employees of the District government shall receive compensation equivalent to the rate established for a GS-14 employee in the Civil Service prorated according to the number of hours actually served. Employees of the District government may not receive additional compensation but shall receive administrative leave during their actual service on an Appeals Board. All members of Appeals Boards shall receive reimbursement for actual expenses incurred. The Director shall designate employees of the Department to assist the Appeals Boards and shall provide such facilities and supplies as are necessary to enable the Appeals Boards to carry out their functions. (Sept. 12, 1978, D.C. Law 2-104, § 401, 25 DCR 1275.)

Legislative History of Law 2-104. See note to § 40-1101.

Section referred to in section. 40-1122.

§ 40-1122. Right of appeal.

Any person who is aggrieved by a determination of a hearing examiner, either as to the existence of liability or the sanction imposed therefor, or both, may appeal such determination pursuant to this subchapter. The Director shall appoint an Appeals Board, pursuant to section 40-1121, to consider and determine the appeal. (Sept. 12, 1978, D.C. Law 2-104, § 402, 25 DCR 1275.)

Legislative History of Law 2-104. See note to § 40-1101.

§ 40-1123. Scope of review.

Each Appeals Board shall review each case before it on the record and shall hold unlawful and set aside any action or findings and conclusions found to be (a) arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law; (b) contrary to constitutional right, power, privilege or immunity; (c) in excess of statutory jurisdiction, authority or limitations or short of statutory rights; (d) without observance of procedure required by law, including any applicable procedure provided by this chapter; or (e) unsupported by substantial evidence in the record of the proceedings before the Appeals Board. (Sept. 12, 1978, D.C. Law 2-104, § 403, 25 DCR 1275.)

Legislative History of Law 2-104. See note to § 40-1101.

§ 40-1124. Time limitation.

- (a) No appeal shall be reviewed if it is filed more than fifteen (15) calendar days after service of notice of the determination appealed from.
- (b) Service of notice under this section shall be complete when the respondent is orally informed of the determination at the hearing or, if the respondent is not orally informed at the hearing, service of notice shall be complete three (3) calendar days after the Department mails notice of the determination to the respondent.
- (c) An appeal filed by mail shall be timely if postmarked within the fifteen (15) day period. (Sept. 12, 1978, D.C. Law 2-104, § 404, 25 DCR 1275.)

Legislative History of Law 2-104. See note to § 40-1101.

§ 40-1125. Judicial review.

Appeals from decisions of the Appeals Board shall be by application for the allowance of an appeal filed in the Superior Court of the District of Columbia within thirty (30) days of the decision of the Appeals Board: Provided, that appeals from the suspension or revocation of one’s license or privilege to drive shall continue to be governed by section 1-1510. Except to the extent that this chapter provides otherwise, the manner of and standards for appeals to the Superior Court of the District of Columbia shall be as set forth in section 1-1510. (Sept. 12, 1978, D.C. Law 2-104, § 405, 25 DCR 1275.)

Legislative History of Law 2-104. See note to § 40-1101.

Subchapter V.—Separability; Effective Date

§ 40-1126. Separability.

If any provision of this chapter or the application of such provision to any person or circumstances shall be held unconstitutional or otherwise invalid, the constitutionality or validity or the remainder of this chapter and the applicability of such provision to other persons or circumstances shall not be affected thereby. (Sept. 12, 1978, D.C. Law 2-104, § 701, 25 DCR 1275.)

Legislative History of Law 2-104. See note to § 40-1101.

§ 40-1127. Effective date.

The provisions of this chapter shall apply only to violations which occur after the Director has promulgated the necessary regulations to carry out this chapter pursuant to section 40-1107. (Sept. 12, 1978, D.C. Law 2-104, § 702, 25 DCR 1275.)

Legislative History of Law 2-104. See note to § 40-1101.

TITLE 41.—PARTNERSHIPS

Cross reference. For certification and registration of accounting partnerships, see § 2-944 et seq. § 40-1101.

TITLE 43.—PUBLIC UTILITIES

Cross references. For hazardous waste management, see § 6-521 et seq. For energy resources shortages, see § 6-2301 et seq.

Chap.	Sec.
2. Creation of Public Service Commission — Members — Counsel — Employees	43-201
3. Service, Valuation, Accounts	43-301
4. Rates, Examinations, Investigations, and Hearings	43-401
7. Orders and Court Proceedings	43-701
12. Gas Companies — Special Acts	43-1201
15. Water Supply, Assessments, and Rates	43-1501
16. Sanitary Sewage Works	43-1601

CHAPTER 2. — CREATION OF PUBLIC SERVICE COMMISSION
— MEMBERS — COUNSEL — EMPLOYEES

§ 43-205. People’s Counsel — Appointment, compensation, qualifications — Personnel — Duties.

NOTES TO DECISIONS

Cited in *Atlantic Tel. Co. v. Public Serv. Comm’n* (D.C. 1978, 390 A.2d 439).

§ 43-205a. Same; Appropriations.

Emergency Act Amendment.
1978 — For temporary amendment of section, see sec. 2 of the People’s Counsel Authorization Emergency Act of 1978 (D.C. Act 2-258, Aug. 14, 1978, 24 DCR 2011) and

sec. 2 of the People’s Counsel Authorization Second Emergency Act of 1978 (D.C. Act 2-304, Nov. 27, 1978, 25 DCR 5513).

CHAPTER 3.—SERVICE, VALUATION, ACCOUNTS

§ 43-301. Public utilities — Service and facilities — Charges to be reasonable, just, and nondiscriminatory — To obey orders of Commission.

NOTES TO DECISIONS

Not every rate variation supports claim of unlawful discrimination. — Not every variation in the rate charged for a particular service supports a claim of unlawful discrimination; so long as the classifications are reasonable, a difference in rates may exist between different classes of customers. *Atlantic Tel. Co. v. Public Serv. Comm’n* (D.C. 1978, 390 A.2d 439).
Factors for determining whether rates discriminatory. — In determining whether there has been discrimination within the meaning of this section, the Commission must consider whether customers have paid different amounts for the same service under the same circumstances. *Atlantic Tel. Co. v. Public Serv. Comm’n*

(D.C. 1978, 390 A.2d 439).
Procedural criteria for setting aside or approving rate orders. — Whereas a Commission rate order cannot be set aside unless a petitioner makes a “convincing showing” that it is unreasonable, unjust or discriminatory, the same rate order cannot be approved by a reviewing court without remand for clarification unless and until the Commission has complied with the Administrative Procedure Act (§ 1-150 et seq.) by specifying its criteria for the order and clearly explaining how its findings rationally support that determination. *Washington Pub. Interest Organization v. Public Serv. Comm’n* (D.C. 1978, 393 A.2d 71).

§ 43-323. Schedule of rates to be filed — Existing rates to remain in force until changed.

NOTES TO DECISIONS

Utility contracting for fixed rate relinquishes right to seek increase. — By contracting with a customer to provide service at a fixed rate, a utility gives up its right

to apply for a rate increase. *Atlantic Tel. Co. v. Public Serv. Comm'n* (D.C. 1978, 390 A.2d 439).

CHAPTER 4.—RATES, EXAMINATIONS, INVESTIGATIONS, AND HEARINGS

§ 43-401. Existing rates continued — Schedules to be filed — Application to change rates — Review of ruling by Court of Appeals.

NOTES TO DECISIONS

Proponent of rate order has burden of proving that the proposed rates are just and reasonable and that the expenditures relied upon as a basis for the rates are themselves reasonable. *Atlantic Tel. Co. v. Public Serv. Comm'n* (D.C. 1978, 390 A.2d 439).

Affiliation of utility and supplier affects Commission's scrutiny of expenditures. — When material and services are purchased by a utility on the open market, the Commission usually accepts the contract price without further inquiry, but when the utility and the supplier are affiliated close scrutiny of the price is usually required. *Atlantic Tel. Co. v. Public Serv. Comm'n* (D.C. 1978, 390 A.2d 439).

Rate of return calculation must factor in impact of nonutility transactions. — When a regulatory commission calculates and approves an overall rate of return and consequent rate schedule for utility operations based on comparative stock prices, it must factor into its determination an analysis of the impact of nonutility transactions on the price of the company's stock, including specific findings and conclusions as to whether and why investors, ratepayers, or both have a claim to nonutility revenues, especially those derived from former utility property which appreciated while in the rate base. *Washington Pub. Interest Organization v. Public Serv. Comm'n* (D.C. 1978, 393 A.2d 71).

Specific finding that price cost compensatory not required. — The Commission did not have to make a specific finding that a price charged was "cost compensatory" where it found that it was sufficient to recover the utility's research and development costs within a reasonable period of time. *Atlantic Tel. Co. v. Public Serv. Comm'n* (D.C. 1978, 390 A.2d 439).

Utility contracting for fixed rate relinquishes right to seek increase. — By contracting with a customer to provide service at a fixed rate, a utility gives up its right to apply for a rate increase. *Atlantic Tel. Co. v. Public Serv. Comm'n* (D.C. 1978, 390 A.2d 439).

Criteria for setting aside or approving rate orders. — Whereas a Commission rate order cannot be set aside unless a petitioner makes a "convincing showing" that it is unreasonable, unjust or discriminatory, the same rate order cannot be approved by a reviewing court without remand for clarification unless and until the Commission has complied with the Administrative Procedures Act (§ 1-1501 et seq.) by specifying its criteria for the order and clearly explaining how its findings rationally support that determination. *Washington Pub. Interest Organization v. Public Serv. Comm'n* (D.C. 1978, 393 A.2d 71).

§ 43-411. Reasonable rates may be ordered — Notice to be given utility affected thereby.

NOTES TO DECISIONS

Contract fixing rate does not impair commission's revision authority. — The fact that a rate is fixed by contract between a utility and its customer does not impair the Commission's authority to revise that rate when circumstances of public necessity so mandate. *Atlantic Tel. Co. v. Public Serv. Comm'n* (D.C. 1978, 390 A.2d 439).

Commission must consider impact of nonutility transactions in calculating rates of return. — When a regulatory commission calculates and approves an overall rate of return and consequent rate schedule for utility operations based on comparative stock prices, it must factor into its determination an analysis of the impact of nonutility transactions on the price of the company's stock, including specific findings and conclusions as to whether and why the investors, ratepayers, or both have a claim to nonutility revenues, especially those derived from former utility property which appreciated while in the rate base. *Washington Pub. Interest Organization v. Public Serv. Comm'n* (D.C. 1978, 393 A.2d 71).

Administrative Procedure Act (§ 1-1501 et seq.) applies to actions of the Commission. *Washington Pub. Interest Organization v. Public Serv. Comm'n* (D.C. 1978, 393 A.2d 71).

Criteria for setting aside or approving rate order. — Whereas a Commission rate order cannot be set aside unless a petitioner makes a "convincing showing" that it is unreasonable, unjust or discriminatory, the same rate order cannot be approved by a reviewing court without remand for clarification unless and until the Commission has complied with the Administrative Procedure Act (§ 1-1501 et seq.) by specifying its criteria for the order and clearly explaining how its findings rationally support that determination. *Washington Pub. Interest Organization v. Public Serv. Comm'n* (D.C. 1978, 393 A.2d 71).

CHAPTER 7.—ORDERS AND COURT PROCEEDINGS

§ 43-704. Application to Court of Appeals for instructions — Application for reconsideration.

NOTES TO DECISIONS

Cited in *Washington Pub. Interest Organization v. Public Serv. Comm’n* (D.C. 1978, 393 A.2d 71); *Atlantic Tel. Co. v. Public Serv. Comm’n* (D.C. 1978, 390 A.2d 439).

§ 43-705. Appeal to Court of Appeals from certain orders — Precedence over other civil causes — Proceeding when additional evidence proper — Statement to accompany decision — Commission not liable for costs or damages.

NOTES TO DECISIONS

Competing telephone company was affected by rate level and therefore could raise any issue relevant to the lawfulness of the Commission’s actions. *Atlantic Tel. Co. v. Public Serv. Comm’n* (D.C. 1978, 390 A.2d 439).
Affected party need not be within zone of interests protected by a regulatory provision in order to challenge agency action on that basis but instead may raise any

relevant question of law in respect to an order or decision. *Atlantic Tel. Co. v. Public Serv. Comm’n* (D.C. 1978, 390 A.2d 439).
Administrative Procedure Act (§ 1-1501 et seq.) applies to actions of the Commission. *Washington Pub. Interest Organization v. Public Serv. Comm’n* (D.C. 1978, 393 A.2d 71).

§ 43-706. Appeal limited to questions of law.

NOTES TO DECISIONS

Normal parameters of review. — A reviewing court’s function is normally exhausted when it has determined that the Commission has respected procedural requirements, has made findings based on substantial evidence and has applied the correct legal standards to its substantive deliberations. *Atlantic Tel. Co. v. Public Serv. Comm’n* (D.C. 1978, 390 A.2d 439).
Criteria for setting aside or approving rate order. — Whereas a Commission rate order cannot be set aside unless a petitioner makes a “convincing showing” that it is unreasonable, unjust or discriminatory, the same rate order cannot be approved by a reviewing court without

remand for clarification unless and until the Commission has complied with the Administrative Procedure Act (§ 1-1501 et seq.) by specifying its criteria for the order and clearly explaining how its findings rationally support that determination. *Washington Pub. Interest Organization v. Public Serv. Comm’n* (D.C. 1978, 393 A.2d 71).
Burden on challenger to show order unjust and unreasonable. — The burden is on the challenging party to show that a rate order is unlawful because it is unjust and unreasonable in its consequences. *Atlantic Tel. Co. v. Public Serv. Comm’n* (D.C. 1978, 390 A.2d 439).

CHAPTER 12.—GAS COMPANIES—SPECIAL ACTS

§ 43-1205. Removal of gas meters for neglect or refusal to pay amount due.

NOTES TO DECISIONS

Limited right of assaulting landowner to assert defense of property. — Where defendant asserted defense of property at his trial for assaulting a gas company collector who had attempted to remove a gas meter for failure to pay bill, the trial judge properly instructed the jury that as long as the employee’s entry was nonforcible

there was no trespass and that unless the employee had departed from the legitimate purpose of his entry, the defendant was not justified in ejecting him under the guise that he was defending his property. *Jackson v. United States* (D.C. 1978, 385 A.2d 786).

CHAPTER 15.—WATER SUPPLY, ASSESSMENTS, AND RATES

§ 43-1521a. Additional charge on unpaid water bills.

Emergency Act Amendments.

1978 — For temporary amendment of section permitting mayor to establish payment schedules for persons unable to pay their water and sanitary sewer service bills within thirty days of rendition of the bill, see secs. 2 and 3 of the Emergency Water and Sewer Bill

Payment Act of 1978 (D.C. Act 2-157, Mar. 10, 1978, 24 DCR 8072); and for temporary amendment providing for additional time to pay bills, see secs. 2 and 3 of the Second Emergency Water and Sewer Bill Payment Act of 1978 (D.C. Act 2-203, June 9, 1978, 25 DCR 395).

§ 43-1521b. Discontinuance of water service for failure to pay water charges.

Emergency Act Amendments.

1978 — For temporary amendment of section permitting mayor to establish payment schedules for persons unable to pay their water and sanitary sewer service bills within thirty days of rendition of the bill, see secs. 2 and 3 of the Emergency Water and Sewer Bill

Payment Act of 1978 (D.C. Act 2-157, Mar. 10, 1978, 24 DCR 8072); and for temporary amendment providing for additional time to pay bills, see secs. 2 and 3 of the Second Emergency Water and Sewer Bill Payment Act of 1978 (D.C. Act 2-203, June 9, 1978, 25 DCR 395).

CHAPTER 16.—SANITARY SEWAGE WORKS

Subchapter I.—D.C. Sanitary Sewage Works

§ 43-1609. Additional charge for overdue bills — Enforcement of lien.

Emergency Act Amendments.

1978 — For temporary amendment of section permitting mayor to establish payment schedules for persons unable to pay their water and sanitary sewer service bills within thirty days of rendition of the bill, see secs. 2 and 3 of the Emergency Water and Sewer Bill

Payment Act of 1978 (D.C. Act 2-157, Mar. 10, 1978, 24 DCR 8072); and for temporary amendment providing for additional time to pay bills, see secs. 2 and 3 of the Second Emergency Water and Sewer Bill Payment Act of 1978 (D.C. Act 2-203, June 9, 1978, 25 DCR 395).

TITLE 44.—RAILROADS AND OTHER CARRIERS

Chap.	Sec.
2. Street Railways and Bus Lines	44-201

CHAPTER 2.—STREET RAILWAYS AND BUS LINES

Sec.	Sec.
44-216. Unlawful conduct on public passenger vehicles.	44-217. Carrier authorized to refuse transportation to violators.
44-216.1. Entry or exit without paying fare; entry by rear exit door.	44-218. Penalties.

§ 44-214a. Fares for schoolchildren not over 18 years of age — Formula for adjusting and payment of fare subsidy.

Emergency Act Amendments.
1978 — For temporary amendment of section, see sec. 2 of the School Transit Subsidy Emergency Act of 1978 (D.C. Act 2-155, Feb. 28, 1978, 24 DCR 9236); sec. 2 of the School Transit Subsidy Emergency Act of 1978 Emergency Amendment Act (D.C. Act 2-176, Apr. 13, 1978, 24 DCR 9048); sec. 2 of the School Transit Subsidy

Emergency Act of 1978 (D.C. Act 2-228, July 13, 1978, 25 DCR 1446); sec. 2 of the Fourth School Transit Subsidy Emergency Act of 1978 (D.C. 2-285, Oct. 25, 1978, 25 DCR 4309); and sec. 2 of the Fifth School Transit Subsidy Emergency Act of 1978 (D.C. Act 2-331, Dec. 29, 1978, 25 DCR 7010).

§ 44-216. Unlawful conduct on public passenger vehicles.

It is unlawful for any person either while aboard a public passenger vehicle with a capacity for seating twelve (12) or more passengers, including vehicles owned and/or operated by the Washington Metropolitan Area Transit Authority, which is transporting passengers in regular route service within the corporate limits of the District of Columbia; or while aboard a rail transit car owned and/or operated by the Washington Metropolitan Area Transit Authority which is transporting passengers within the corporate limits of the District of Columbia; or while within a rail transit station owned and/or operated by the Washington Metropolitan Area Transit Authority which is located within the corporate limits of the District of Columbia to:

- (1) smoke or carry a lighted or smoldering pipe, cigar, or cigarette;
 - (2) consume food or drink;
 - (3) spit;
 - (4) discard litter;
 - (5) play any radio, cassette, recorder, musical instrument or other such device, unless it is connected to an earphone that limits the sound to the individual user;
 - (6) carry any flammable or combustible liquids, live animals, explosives, acids or any other item inherently dangerous or offensive to others, except for seeing eye dogs properly harnessed and accompanied by a blind passenger and for small animals properly packaged; or
 - (7) stand in front of the white line marked on the forward end of the floor of any bus or otherwise conduct himself in such a manner as to obstruct the vision of the operator.
- (Sept. 23, 1975, D.C. Law 1-18, § 2, 22 DCR 1994; Feb. 22, 1978, D.C. Law 2-40, § 2, 24 DCR 3344).

Effect of Amendment.
1978 — Act Feb. 22, 1978, D.C. Law 2-40, amended section generally.

Legislative History of Law 2-40. Law 2-40 was introduced in Council and assigned Bill No. 2-121, which was referred to the Committee on Transportation and

Environmental Affairs. The Bill was adopted on first and second readings on July 26, 1977 and September 13, 1977, respectively. Signed by the Mayor on October 25, 1977, it was assigned Act No. 2-92 and transmitted to both Houses of Congress for its review.

Section referred to in section. 44-217.

§ 44-216.1. Entry or exit without paying fare; entry by rear exit door.

No person shall either knowingly board a public or private passenger vehicle for hire, including vehicles owned and/or operated by the Washington Metropolitan Area Transit Authority, which is transporting passengers within the corporate limits of the District of Columbia; or knowingly

board a rail transit car owned and/or operated by the Washington Metropolitan Area Transit Authority which is transporting passengers within the corporate limits of the District of Columbia; or knowingly enter or leave the paid area of a rail transit station owned and/or operated by the Washington Metropolitan Area Transit Authority which is located within the corporate limits of the District of Columbia without paying the established fare or presenting a valid transfer for transportation on such public passenger vehicle or rail transit car. No person shall board a public or private passenger vehicle for hire, including vehicles owned and/or operated by the Washington Metropolitan Area Transit Authority, through the rear exit door, unless so directed by an employee or agent of the carrier. (Feb. 22, 1978, D.C. Law 2-40, § 2, 24 DCR 3344).

Legislative History of Law 2-40. See note to § 44-216.
Section referred to in sections. 44-217, 44-218.

§ 44-217. Carrier authorized to refuse transportation to violators.

A carrier may refuse to transport a person or persons whose immediately observed conduct or behavior would constitute a violation of section 44-216 or 44-216.1. (Sept. 23, 1975, D.C. Law 1-18, § 4, 22 DCR 1995; Feb. 22, 1978, D.C. Law 2-40, § 2, 24 DCR 3344.)

Effect of Amendment.
1978 — Act Feb. 22, 1978, D.C. Law 2-40, amended section by changing “section 44-216” to “section 44-216 or

44-216.1” and by changing § 3 of D.C. Law 1-18 in the historical citation to the section to § 4.

Legislative History of Law 2-40. See note to § 44-216.

§ 44-218. Penalties.

Violation of section 44-216 shall be punishable by a fine of not less than ten nor more than fifty dollars for a first offense and by a fine of not less than fifty dollars (\$50) nor more than one hundred dollars (\$100) or by imprisonment for not more than ten (10) days or both for each second or subsequent offense. A violation of section 44-216.1 shall be punishable by a fine of not more than three hundred dollars (\$300) or by imprisonment for not more than ten (10) days or both. (Sept. 23, 1975, D.C. Law 1-18, § 5, 22 DCR 1995; Feb. 22, 1978, D.C. Law 2-40, § 2, 24 DCR 3344.)

Effect of Amendment.
1978 — Act Feb. 22, 1978, D.C. Law 2-40, amended section by deleting the word “find” and inserting the word “fine,” deleting the words “;and not less than fifty nor more than one hundred dollars or ten days in jail,” and inserting in lieu thereof the words “and by a fine of not

less than fifty dollars (\$50) nor more than one hundred dollars (\$100) or by imprisonment for not more than ten (10) days,” adding the last sentence and by changing § 4 of D.C. Law 1-18 in the historical citation to the section to § 5.

Legislative History of Law 2-40. See note to § 44-216.

TITLE 45.—REAL PROPERTY

Cross references. For tax relief for residential property, see § 47-659 et seq. For residential real property transfers, see § 47-3301 et seq.

Chap.	Sec.
3. Forms — Covenants and Warranties	45-301
6. Mortgages and Deeds of Trust	45-601
7. Recorder of Deeds	45-701
8. Estates in Land	45-801
9. Landlord and Tenant	45-901
14. Real Estate and Business Brokers' Licenses	45-1401
16. Rent Control	45-1601
18. Home Purchase Assistance Fund	45-1801

CHAPTER 3.—FORMS—COVENANTS AND WARRANTIES

§ 45-301. Forms of instruments.

NOTES TO DECISIONS

Veterans Administration involvement insufficient to bring nonjudicial foreclosure within Fifth Amendment. — Fact that loan was secured under a program administered by the Veterans Administration was not sufficient to bring nonjudicial foreclosure and sale within

the Fifth Amendment, because the primary transaction was between private parties and the V.A.'s participation and importance was minimal. *Simpson v. Jack Spicer Real Estate, Inc.* (D.C. 1978, 396 A.2d 212).

CHAPTER 6.—MORTGAGES AND DEEDS OF TRUST

§ 45-603. Estate of mortgage or trustee conveyed.

NOTES TO DECISIONS

Veterans Administration involvement insufficient to bring nonjudicial foreclosure within Fifth Amendment. — Fact that loan was secured under a program administered by the Veterans Administration was not sufficient to bring nonjudicial foreclosure and sale within

the Fifth Amendment, because the primary transaction was between private parties and the V.A.'s participation and importance was minimal. *Simpson v. Jack Spicer Real Estate, Inc.* (D.C. 1978, 396 A.2d 212).

§ 45-615. Terms of sale and notice to be given.

NOTES TO DECISIONS

Veterans Administration involvement insufficient to bring nonjudicial foreclosure within Fifth Amendment. — Fact that loan was secured under a program administered by the Veterans Administration was not sufficient to bring nonjudicial foreclosure and sale within

the Fifth Amendment, because the primary transaction was between private parties and the V.A.'s participation and importance was minimal. *Simpson v. Jack Spicer Real Estate, Inc.* (D.C. 1978, 396 A.2d 212).

CHAPTER 7.—RECORDER OF DEEDS

Subchapter II.—Recordation Tax on Deeds	
Sec.	
45-723. Imposition of tax — Rate — Returns — Liability for tax.	correctness of returns — Production of books and records — Examination of witnesses — Service of summons — Compelling attendance — Punishment for disobedience.
45-725. Investigation by Commissioner to determine	

*Subchapter II.—Recordation Tax On Deeds***§ 45-723. Imposition of tax — Rate — Returns — Liability for tax.**

* * * * *

(b) Each such deed shall be accompanied by a return under oath in such form as the Mayor may prescribe, executed by all the parties to the deed, setting forth the consideration for the deed, the amount of tax payable, whether the property to which the deed or document refers is a residential real property as defined in section 47-3301, and such other information as the Mayor may require so as to provide an accurate and complete public record of each transfer of residential real property.

* * * * *

(As amended July 13, 1978, D.C. Law 2-91, § 304, 24 DCR 9765.)

Effect of Amendment.

1978—Act July 13, 1978, D.C. Law 2-91, amended section by deleting “and such other information as the Commissioner may require” from subsection (b) and by inserting the phrase following the word “payable” in subsection (b).

Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Section referred to in section. 47-3301.

Legislative History of Law 2-91. See note to § 47-3301.

Succession in government. The District of Columbia Council and the office of Commissioner of the District of

§ 45-725. Investigation by Mayor to determine correctness of returns — Production of books and records — Examination of witnesses — Service of summons — Compelling attendance — Punishment for disobedience.

The Mayor, for the purpose of ascertaining the correctness of any return, statement, affidavit, or other document filed pursuant to any provision of this subchapter or pursuant to any regulations of the Council of the District of Columbia promulgated hereunder, or for the purpose of ascertaining the correctness of any payment of the tax imposed by this subchapter, or the consideration for any deed upon which a tax is imposed, or for the purposes of ascertaining whether a deed or other document was required to be recorded pursuant to section 47-3313, is authorized to examine any books, papers, records, or memorandums of any person bearing upon such matters and may summon any person to appear and produce books, records, papers, or memorandums pertaining thereto and to give testimony or answer interrogatories under oath respecting the same, and the Mayor shall have power to administer oaths to such person or persons. Such summons may be served by any member of the Metropolitan Police Department. If any person having been personally summoned shall neglect or refuse to obey the summons as herein provided then, and in that event, the Mayor may report that fact to the Superior Court for the District of Columbia, or one of the judges thereof, and said court or any judge thereof hereby is empowered to compel obedience to such summons to the same extent as witnesses may be compelled to obey the subpoenas of that court. Any person in custody or control of any books, papers, records, or memorandums bearing upon the matters to which reference is herein made who shall refuse to permit the examination by the Mayor or any person designated by him of any such books, papers, or memorandums, or who shall obstruct or hinder the Mayor or any person designated by him in the examination of any books, papers, records, or memorandums, shall upon conviction thereof be subject to the penalties provided in this subchapter. (Mar. 2, 1962, 76 Stat. 12 Pub. L. 87-408, title III, § 305; July 29, 1970, Pub. L. 91-358, title I, § 155(c)(41), 84 Stat. 572; July 13, 1978, D.C. Law 2-91, § 304, 24 DCR 9765.)

Effect of Amendment.
1978—Act July 13, 1978, D.C. Law 2-91, amended section by inserting “or for the purposes of ascertaining whether a deed or other document was required to be recorded pursuant to section 47-3313,” in the first sentence.
Legislative History of Law 2-91. See note to § 47-3301.

Succession in government. The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 45-728. Deficiencies in tax — Notice of determination — Protests — Hearings — Time for payment.

Section referred to in section. 47-3315.

CHAPTER 8.—ESTATES IN LAND

§ 45-822. Estates at will — When terminated.

NOTES TO DECISIONS

Meaning of “tenant” at common law. — A tenant at common law holds or possesses lands by any kind of right or title. *Simpson v. Jack Spicer Real Estate, Inc.* (D.C. 1978, A.2d 212).
Section did not entitle mortgagor holding over after foreclosure to protections afforded renters from

evictions by their landlords under the Rental Accommodations Act of 1975 (now repealed) because the statutes were not in pari materia and the term “tenant” is not defined consistently throughout the District of Columbia Code. *Simpson v. Jack Spicer Real Estate, Inc.* (D.C. 1978, 396 A.2d 212).

CHAPTER 9.—LANDLORD AND TENANT

§ 45-910. Ejectment or summary proceedings.

NOTES TO DECISIONS

Landlord-tenant relationship is jurisdictional under this section. *Pollock v. Brown* (D.C. 1978, 395 A.2d 50).
Effect of statutory procedures on landlord and tenant rights. — The landlord’s common-law right of self-help has been abrogated by exclusive statutory procedures for dispossessing a tenant, who has a right not to have his or her possession interfered with except by lawful process; and violation of the tenant’s right gives rise to a cause of action in tort. *Mendes v. Johnson* (D.C. 1978, 389 A.2d 781).
Retaliatory eviction available to tenant as shield but not sword. — Retaliatory eviction is a valid defense to a landlord’s action for possession, but there is in this jurisdiction no independent cause of action by a tenant against a landlord based on an unsuccessful retaliatory eviction suit. *Weisman v. Middleton* (D.C. 1978, 390 A.2d 996).

Tenant’s action for malicious prosecution. — Where a landlord’s two unsuccessful suits for possession were brought with malice and without probable cause, the tenant would have action for malicious prosecution on the ground of special injury. *Weisman v. Middleton* (D.C. 1978, 390 A.2d 996).
Not necessarily barred because landlord’s of suit resulted in payment of rent. — A landlord’s suit for possession for the nonpayment of rent, resulting in payment of rent, may be considered successful and a bar to a subsequent action for malicious prosecution only if the landlord had made an unsuccessful good faith attempt to secure payment prior to the filing of his suit for possession. *Weisman v. Middleton* (D.C. 1978, 390 A.2d 996).

§ 45-911. Arrears of rent and double rent.

NOTES TO DECISIONS

Landlord-tenant relationship is jurisdictional under this section. *Pollock v. Brown* (D.C. 1978, 395 A.2d 50).

CHAPTER 14.—REAL ESTATE AND BUSINESS BROKERS’ LICENSES

§ 45-1402. Definitions — Exceptions.

Section referred to in section. 47-3316.

§ 45-1408. Suspension or revocation of license — Causes enumerated.

Section referred to in section. 47-3322.

§ 45-1409. Hearing before suspension — Court review — Appeal.

Section referred to in section. 47-3323.

§ 45-1410. Provisions applicable to nonresident brokers and salesmen.

Section referred to in section. 47-3321.

§ 45-1416. Penalties — Prosecutions.

Section referred to in section. 47-3326.

CHAPTER 16.—RENT CONTROL

Subchapter III.—Rental Accommodations Act of 1975

Sec.

45-1631 to 45-1674. Repealed.

Subchapter IV.—Rental Housing Act of 1977

Title I.—Definitions

45-1681. Definitions.

Title II.—Rent Stabilization Program

- 45-1682. Continuation of Commission; qualifications.
- 45-1683. Duties of the Commission.
- 45-1684. Rental Accommodations Office.
- 45-1685. Duties of the Rent Administrator.
- 45-1686. Registration and coverage.
- 45-1687. Rent ceiling.
- 45-1688. Adjustments in the rent ceiling.
- 45-1689. Qualifications for increases above the base rent.
- 45-1690. Rent ceiling upon termination of exemption and for newly-covered rental units.
- 45-1691. Capital improvements.
- 45-1692. Services and facilities.
- 45-1693. Hardship petition.
- 45-1694. Vacant accommodation.
- 45-1695. Adjustment procedure.
- 45-1696. Security deposit.
- 45-1697. Judicial review.

Title III.—Rental Supplement Program

- 45-1698. Eligibility.
- 45-1699. Rental supplement grants.
- 45-1699.1. Administration.
- 45-1699.2. Continued eligibility.
- 45-1699.3. Termination of eligibility.
- 45-1699.4. Tax exemption.

Title IV.—Revenue

45-1699.5. Annual rental unit fee.

Title V.—Evictions and Retaliatory Action

- 45-1699.6. Evictions.
- 45-1699.7. Retaliatory action.

Title VI.—Sale of Rental Housing

Sec.

- 45-1699.8. Sale of single-family housing accommodations.
- 45-1699.9. Sale of housing accommodations comprised of two or more rental units.
- 45-1699.10. Conversion of a housing accommodation to a cooperative.
- 45-1699.11. Conversion of a housing accommodation to another use.

Title VII.—Substantial Rehabilitation of Housing Accommodations from Which a Tenant Was Evicted.

- 45-1699.12. Applicability of provisions.
- 45-1699.13. Petition for adjustment in rent ceiling due to substantial rehabilitation.
- 45-1699.14. Criteria for approving petition.
- 45-1699.15. Amount of adjustment in rent ceiling for substantial rehabilitation.
- 45-1699.16. Notice of intent to substantially rehabilitate.
- 45-1699.17. Notice to vacate for substantial rehabilitation.
- 45-1699.18. Tenant’s right to re-rent.

Title VIII.—Relocation Assistance for Tenants Displaced by Substantial Rehabilitation, Demolition, or Housing Discontinuance

- 45-1699.19. Notice of right to relocation assistance.
- 45-1699.20. Eligibility requirements for relocation assistance.
- 45-1699.21. Relocation assistance payments.
- 45-1699.22. Relocation advisory services.
- 45-1699.23. Tenant hot line.

Title IX.—Miscellaneous Penalties; Severability; Supersedence; Service; Effective Date; Termination

- 45-1699.24. Penalties.
- 45-1699.25. Severability.
- 45-1699.26. Service.
- 45-1699.27. Termination.

Subchapter III.—Rental Accommodations Act of 1975

§§ 45-1631 to 45-1674. Repealed. Mar. 16, 1978, D.C. Law 2-54, § 903, 24 DCR 5334.

Legislative History of Law 2-54. See note to § 45-1681.

Subchapter IV.—Rental Housing Act of 1977

Title I.—Definitions

§ 45-1681. Definitions.

For the purposes of this subchapter:

(a) The term “base rent” means that rent legally charged or chargeable on October 31, 1977 for the rental unit which shall be the sum of rent charged on February 1, 1973 and all rent increases authorized for that rental unit by prior rent control laws or any administrative decision issued thereunder, or any rent increases authorized by a court of competent jurisdiction.

(b) The term “capital improvement” means an improvement or renovation other than ordinary repair, replacement or maintenance, the use of which continues beyond the twelve (12) month period beginning on the date of completion of such capital improvement.

(c) The term “Commission” means the Rental Accommodations Commission as continued by title II of this subchapter.

(d) The term “Council” means the Council of the District of Columbia as established by section 1-141.

(e) The term “D.C. Law 1-33” means the “District of Columbia Rental Accommodations Act of 1975”, as amended.

(f) The term “housing accommodations” means any structure or building in the District of Columbia containing one (1) or more rental units and the land appurtenant thereto. Such term shall not include any hotel, motel, or other structure, including any room therein, used primarily for transient occupancy and in which at least sixty percent (60%) of the rooms devoted to living quarters for tenants or guests are used for transient occupancy. For the purposes of this subchapter, a rental unit shall be deemed to be used for transient occupancy if the landlord thereof is subject to and pays the sales tax imposed by section 47-2601 (14) (a) (3).

(g) The term “Housing Regulations” means the most recent edition of the Housing Regulations of the District of Columbia as established by the Commissioner’s Order dated August 11, 1955 (C.O. No. 55-1503).

(h) The term “initial leasing period” means that period for which the first tenant of a rental unit rents such rental unit. For rental units described in section 45-1686 (a) (2), the first tenant is the tenant who rents such rental unit immediately following the issuance of the certificate of occupancy. For units described in section 45-1690, the first tenant is the tenant who rents such rental unit immediately after the date it is first offered for rent as a rental unit which is not otherwise exempt from this subchapter.

(i) The term “landlord” means an owner, lessor, sublessor, assignee, any agent thereof or any other person receiving or entitled to receive rents or benefits for the use or occupancy of any rental unit within a housing accommodation within the District of Columbia.

(j) The term “management fee” means the amount paid to a managing agent and any pro rata salaries of off-site administrative personnel paid by the landlord: Provided, that the duties of such personnel are connected with the operation of the housing accommodation.

(k) The term “market value” means the most recently assessed value of the housing accommodation as determined by the Mayor for real property tax purposes.

(l) The term “maximum possible rental income” means the sum of the rents for all rental

units in the housing accommodation, whether occupied or not, computed over a base period of the consecutive twelve (12) months immediately preceding the date of any filing required or permitted under this subchapter.

(m) The term "Mayor" means the Office of the Mayor of the District of Columbia as established under section 1-161.

(n) The term "Office" means the Rental Accommodations Office as provided in section 45-1684 (a).

(o) The term "operating expenses" means the expenses required for the operation of a housing accommodation for the consecutive twelve (12) month period immediately preceding the date of its use in any computation required by any provision of this subchapter, including but not limited to expenses for salaries of on-site personnel, supplies, painting, maintenance and repairs, utilities, professional fees, on-site offices, and insurance.

(p) The term "other income which is derived from the housing accommodation" means any income, other than gross rents, which a landlord earns because of his or her ownership of a housing accommodation, including but not limited to fees, commissions, income from vending machines, income from laundry facilities, and income from parking and recreational facilities.

(q) The term "person" means an individual, corporation, partnership, association, joint venture, business entity, or an organized group of individuals and their respective successors and assignees.

(r) The term "property taxes" means the amount levied by the government of the District of Columbia for real property tax on a housing accommodation during a tax year.

(s) The term "related facility" means any facility, furnishing, or equipment made available to a tenant by a landlord, the use of which is authorized by the payment of the rent charged for a rental unit, including any use of a kitchen, bath, laundry facility, parking facility, and the common use of any common room, yard or other common area.

(t) The term "related services" means services provided by a landlord, or required by law or by the terms of a rental agreement to be provided by a landlord, to a tenant in connection with the use and occupancy of a rental unit, including repairs, decorating and maintenance, the provision of light, heat, hot and cold water, air-conditioning, telephone answering and elevator services, janitorial services, and the removal of trash and refuse.

(u) The term "rent" means the entire amount of money, money's worth, benefit, bonus, or gratuity demanded, received, or charged by a landlord as a condition of occupancy or use of a rental unit, its related services, and its related facilities.

(v) The term "rent ceiling" means that amount defined in or computed under section 45-1687.

(w) The term "rental unit" means any part of a housing accommodation as defined in subsection (f) of this section which is rented or offered for rent for residential occupancy and includes any apartment, efficiency apartment, room, single-family house (the land appurtenant thereto), and suite of rooms or duplex.

(x) The term "substantial rehabilitation" means any improvement to or renovation of a housing accommodation for which: (1) the building permit was granted on or after February 1, 1973; and (2) the total expenditure for the improvement or renovation equals or exceeds fifty percent (50%) of the market value of the housing accommodation before such rehabilitation.

(y) The term "tenant" includes a tenant, subtenant, lessee, sublessee, or other person entitled to the possession, occupancy or the benefits thereof, of any rental unit owned by another person.

(z) The term "uncollected rent" means the amount of rent(s) and other charges due for at least thirty (30) days but not received from tenants at the time any statement, form or petition is filed pursuant to this subchapter.

(aa) The term "vacancy loss" means the amount of rent not collectable due to vacant units in a housing accommodation. No amount shall be included therein for units occupied by a landlord or his or her employees or otherwise not offered for rent.

(bb) The term "substantial violation" means the presence of any housing condition, the existence of which, violates the District of Columbia Housing Regulations, or any other statute

or regulation relative to the condition of residential premises and may endanger or materially impair the health and safety of any tenant or person occupying the property.
(Mar. 16, 1978, D.C. Law 2-54, § 102, 24 DCR 5334.)

Legislative History of Law 2-54. Law 2-54 was introduced in Council and assigned Bill No. 2-152, which was referred to the Committee on Housing and Urban Development. The Bill was adopted on first and second readings on November 15, 1977 and November 29, 1977, respectively. There being no action by the Mayor, it was

assigned Act No. 2-118 and transmitted to both Houses of Congress for its review.
Short title. The first section of the act of Mar. 16, 1977, D.C. Law 2-54, 24 DCR 5334, provided “That this act may be cited as the ‘Rental Housing Act of 1977.’ ”
Section referred to in sections. 45-1690, 45-1699.11.

NOTES TO DECISIONS

Decisions Under Prior Law

Contractual relationship between landlord and tenant. — A tenant under former renters’ statute stood in a contractual relationship with his landlord. *Simpson v. Jack Spicer Real Estate, Inc.* (D.C. 1978, 396 A.2d 212).
Mortgagor holding over after foreclosure not entitled to protections afforded renters. — A tenancy arising

from mere possession was held not within scope of former rent control statute, and thus mortgagor holding over after foreclosure was not entitled to statutory protections afforded renters. *Simpson v. Jack Spicer Real Estate, Inc.* (D.C. 1978, 396 A.2d 212).

Title II.—Rent Stabilization Program

§ 45-1682. Continuation of Commission; qualifications.

- (a) The District of Columbia Rental Accommodations Commission (hereinafter referred to as the “Commission”) as established under section 45-1631 (a) is continued and shall be composed of nine (9) members appointed by the Mayor by and with the advice and consent of the Council. Members appointed to the Commission under this subchapter shall each serve a two (2) year term. Three (3) members of the Commission shall represent the interests of landlords, and each of the three (3) shall be a landlord of at least one (1) housing accommodation located in the District of Columbia. Three (3) members of the Commission shall be tenants who shall represent the interests of tenants, and three (3) members of the Commission shall be neither landlords nor tenants. All of the members of the Commission shall be residents of the District of Columbia and shall be members of no more than one (1) other District of Columbia Board or Commission.
- (b) Individuals serving on the Commission on the effective date of this subchapter shall remain in office until their successors are duly sworn into office. Members of the Commission presently serving shall be eligible for reappointment.
- (c) The Mayor shall have the authority to remove any member from the Commission who fails to maintain the qualifications of a member or who fails to attend seventy percent (70%) of the regularly scheduled Commission meetings held within any six (6) month period.
- (d) Any member who holds no other salaried public position shall receive compensation at the rate of fifty dollars (\$50.00) for each day such member is engaged in the actual performance of duties vested in the Commission: Provided, that no member shall receive more than five thousand and four hundred dollars (\$5,400.00) under this subsection in any one (1) calendar year.
- (e) Five (5) members of the Commission shall constitute a quorum for the purpose of transacting business: Provided, that one of the five (5) members is a landlord, one (1) is a tenant, and one (1) is neither a tenant nor a landlord. The Commission is authorized to delegate to any panel of three (3) or more members any appellate function which it may itself exercise: Provided, that such panels are constituted with one (1) tenant, one (1) landlord, and one (1) who is neither a tenant nor a landlord.
- (f) The Commission shall choose annually, from among its members who are neither tenants nor landlords, a Chairperson and Vice Chairperson. The Commission may choose from its membership such other officers as it deems necessary. (Mar. 16, 1978, D.C. Law 2-54, § 201, 24 DCR 5334.)

§ 45-1683. Duties of the Commission.

(a) The Commission shall:

(1) promulgate, amend, and rescind rules and procedures for the administration of this subchapter; and

(2) decide appeals brought to it from decisions of the Rent Administrator.

(b) The Commission and the Rent Administrator shall collect and report data on the effects that the provisions of this subchapter have on the price, quantity and quality of rental housing in the District of Columbia.

(c) The Commission, with the assistance of the Rental Accommodations Office, shall report to the Council annually on the fiscal year basis utilized by the government of the District of Columbia, not later than November 15 of each year. This report shall cover the preceding twelve (12) months, except that the report to be filed November 15, 1978 will cover the period from March 21, 1977. The first report shall include any changes in operating costs occurring during the period from the last report, and any known court mandated future rent increases. The annual report shall include the number of hardship petitions filed and the number of hardship petitions granted. This information shall be broken down by ward and shall indicate whether the affected housing accommodations are single-family (comprising one rental unit), flat (comprising four or less rental units), or multi-family (comprising four or more rental units). Further, the report shall include findings with respect to, but not limited to, taxes, fees and permits; water and sewer service charges; heating oil; electricity; natural gas; building maintenance; contracted services, including parts and supplies; payroll costs; repair costs; insurance; management fees; and general administrative costs. To the extent possible, the report shall also address the quantity, quality and price of the rental housing stock in the District of Columbia and any effect the provisions of this subchapter may have had thereon as demonstrated by statistical evidence. Findings included in the Commission's report shall be based in part on testimony presented by both landlords and tenants given at public hearings. Such other documentation and analysis as may be required to support the Commission's findings shall also be included.

(d) Based on the findings made by the Commission for the report required by subsection (c) of this section the Commission shall, as a part of such report, make the determination authorized by section 45-1687 (c) and may make recommendations to the Council for legislative action.

(e) (1) The Commission may hold such hearings, sit and act at such times and places within the District of Columbia, administer such oaths, and require by subpoena or otherwise the attendance and testimony of such witnesses and the production of such books, records, correspondence, memoranda, papers and documents as the Commission may deem advisable in carrying out its functions under this subchapter.

(2) In the case of contumacy or refusal to obey a subpoena issued under subsection (e) (1) of this section by any person who resides, is found or transacts business within the District of Columbia, the Superior Court of the District of Columbia, at the written request of the Commission, shall have jurisdiction to issue the person an order requiring the person to appear before the Commission, there to produce evidence if so ordered or there to give testimony touching upon the matter under inquiry. Any failure of the person to obey any order of the Superior Court of the District of Columbia may be punished by that court as contempt thereof.

(f) Upon the written request of the Chairperson of the Commission, each department or entity of the government of the District of Columbia is authorized to furnish directly to the Commission such assistance and information, as may be necessary for the Commission to effectively carry out this subchapter. (Mar. 16, 1978, D.C. Law 2-54, § 202, 24 DCR 5334.)

Legislative History of Law 2-54. See note to § 45-1681.

Section referred to in sections. 45-1685, 45-1687.

§ 45-1684. Rental Accommodations Office.

(a) There is hereby continued as an agency of the government of the District of Columbia, within the Executive Office of the Mayor, a Rental Accommodations Office which shall have as its head a Rent Administrator to be appointed by the Mayor.

(b) The Rent Administrator shall possess experience of a technical nature in landlord-tenant affairs or in a field directly related thereto, shall be a resident of the District of Columbia and shall be entitled to receive annual compensation (payable in regular installments) at the rate of grade 15 of the General Schedule under section 5332 of title 5 of the United States Code. (Mar. 16, 1978, D.C. Law 2-54, § 203, 24 DCR 5334.)

Legislative History of Law 2-54. See note to § 45-1681.
Section referred to in section. 45-1681.

§ 45-1685. Duties of the Rent Administrator.

(a) The Rent Administrator shall carry out, according to rules and procedures established by the Commission under section 45-1683(a)(1), the rent stabilization program established under title II of this subchapter and shall perform such other duties as may be necessary, appropriate and consistent with the provisions of this subchapter.

(b) The Rent Administrator or his or her designee shall have jurisdiction over those complaints and petitions arising under titles II, V, VI and VII of this subchapter which may be disposed of through administrative proceedings.

(c) The Rent Administrator shall propose an annual budget and recommend such staff as will enable the Office and the Commission to carry out the appropriate provisions of this subchapter.

(d) (1) The Rent Administrator may employ, with such funds as may be available to the Rent Administrator, such personnel and consultants, including hearing examiners and legal counsel, as are necessary to carry out the provisions of this subchapter.

(2) In accordance with the regulations promulgated by the Commission, the Rent Administrator may delegate authority to those employees appointed in conformity with subsection (d) (1) of this section. Such authority may include, but is not limited to hearing administrative petitions filed or initiated under this subchapter, issuing those decisions and rendering final orders on any petition heard by the employee.

(e) The Rent Administrator shall assist and provide staff support to the Commission in the preparation of the annual report required by section 45-1683(c).

(f) The Rent Administrator or his or her designee shall attend all meetings of the Commission, and shall make available to the Commission such books, reports, and data collected and whatever staff support the Commission may require in order to effectively carry out its duties under this subchapter.

(g) (1) The Rent Administrator shall have the power to hold hearings, sit and act at those times and places within the District of Columbia, administer oaths, and require by subpoena or otherwise the attendance and testimony of witnesses and the production of books, records, correspondence, memoranda, papers and documents as the Rent Administrator may deem necessary in carrying out his or her functions under this subchapter.

(2) In the case of contumacy or refusal to obey a subpoena issued under subsection (g) (1) of this section by any person who resides, is found, or transacts business within the District of Columbia, the Superior Court of the District of Columbia, at the written request of the Rent Administrator, shall have jurisdiction to issue to such person an order requiring such person to appear before the Rent Administrator, there to produce evidence if so ordered, or there to give testimony touching upon the matter under inquiry. Any failure of such person to obey any order of the Superior Court of the District of Columbia may be punished by that court as contempt thereof.

(h) Upon the written request of the Rent Administrator, each department or entity of the government of the District of Columbia is authorized to furnish directly to the Rent Administrator such assistance and information as may be necessary to effectively discharge the functions required under this subchapter.

(i) The Rent Administrator shall publish within sixty (60) days after the effective date of this subchapter a booklet or other such written material describing tenants' and landlords' rights, obligations, and procedures pursuant to this subchapter. This material shall be distributed through the District of Columbia libraries and other District of Columbia offices in which the

public has frequent contact and at the office of any community organization which requests to distribute such material. (Mar. 16, 1978, D.C. Law 2-54, § 204, 24 DCR 5334.)

Legislative History of Law 2-54. See note to § 45-1681.

§ 45-1686. Registration and coverage.

(a) Section 45-1686(d) through section 45-1697 (except section 45-1696) shall apply to each rental unit in the District of Columbia except:

(1) any rental unit in any federally or District owned housing accommodation; or in any housing accommodation with respect to which the mortgage or rent is federally or District subsidized except units subsidized pursuant to title III of this subchapter;

(2) any rental unit in a housing accommodation for which the initial certificate of occupancy was issued after February 2, 1973, but such exclusion shall be effective only during the length of the initial leasing period or for the first year of tenancy, whichever is shorter;

(3) any rental unit in any newly-constructed housing accommodation for which the building permit was issued on or after January 1, 1976: Provided, however, that this exemption shall not apply to any housing accommodation, the construction of which required the demolition of any housing accommodation subject to this subchapter, unless the number of newly-constructed rental units exceeds the number of demolished rental units;

(4) any rental unit in any housing accommodation of four (4) or fewer units, including any aggregate of four (4) units whether within the same structure or not: Provided, that:

(A) such housing accommodation is owned by not more than four (4) natural persons;

(B) none of such owners has an interest either directly or indirectly, in any other rental unit in the District of Columbia; and

(C) the owner(s) of such housing accommodation shall file with the Rent Administrator a claim of exemption statement which shall consist of an oath or affirmation by such owner(s) of the valid claim to the exemption. The claim of exemption statement shall also contain the signatures of each person having an interest (direct or indirect) in the housing accommodation. Any change in the ownership of the exempted housing accommodation or change in the owner's interest in any other housing accommodation which would invalidate the exemption claim must be reported in writing to the Rent Administrator within thirty (30) days of such change;

(5) any housing accommodation which has been continuously vacant and not subject to a rental agreement for a period of at least six (6) months: Provided, that January 1, 1977 falls within such six (6) month period and that such housing accommodation has not been rented or offered for rent since the beginning of the required vacancy period of at least six (6) months, and: Provided, further, that upon re-rental such housing accommodation is in substantial compliance with the Housing Regulations when offered for rent.

(b) Prior to the execution of a lease or other rental agreement after the effective date of this subchapter, a prospective tenant of any unit exempted under subsection (a) of this section shall receive a notice in writing advising him or her that rent increases for the accommodation are not regulated by the Rent Stabilization Program.

(c) This subchapter shall not apply to the following rental units:

(1) any rental unit in an establishment which has as its primary purpose the providing of diagnostic care and treatment of diseases, including, but not limited to hospitals, convalescent homes, nursing homes, and personal care homes;

(2) any dormitory of an institution of higher education or of a private boarding school in which rooms are provided for students.

(d) Within not more than ninety (90) days following the effective date of this subchapter, each landlord of any rental unit not exempted by this subchapter shall file with the Rent Administrator, on a form approved by the Rent Administrator, a new registration statement for each housing accommodation in the District of Columbia for which he or she is receiving rent or is entitled to receive rent. The registration form shall contain, but not be limited to:

(1) for each accommodation requiring a housing business license, the date(s) and number(s) of that housing business license and the certificates of occupancy, where required by law, issued by the government of the District of Columbia, and a copy of each license and certificate;

(2) for each accommodation not required to obtain a housing business license, the information contained therein and the date and number of the certificates of occupancy issued by the government of the District of Columbia, and a copy of each certificate;

(3) the base rent for each rental unit in the accommodation, the related services included, and the related facilities and charges therefor;

(4) the number of bedrooms in the housing accommodation;

(5) a list of any outstanding violations of the housing code applicable to such accommodation, or an affidavit that there are no known outstanding violations; and

(6) the rate of return for the housing accommodation and the computations made by the landlord to arrive at such rate of return by application of the formula provided in section 45-1693.

(e) An amended registration statement shall be filed by each registrant under this law, within thirty (30) days of any event which changes or substantially affects the rents, services, facilities or the ownership or management of any rental unit in a registered housing accommodation: Provided, that no such amended registration statement shall be required for a change in rent pursuant to section 45-1687.

(f) Each registration statement filed under this section shall be available for public inspection at the Office, and each landlord shall keep a duplicate of the registration statement posted in a public place on the premises of the housing accommodation to which such registration statement applies: Provided, that each landlord may, in lieu of posting in each housing accommodation comprised of a single rental unit, mail to each tenant of such housing accommodation a duplicate of the registration statement.

(g) Each registration statement filed under this section which meets the minimum requirements established by this subchapter and by the rules of procedure of the Commission, shall be assigned a registration number.

(h) Each certificate of occupancy and each housing business license issued to any landlord in the District of Columbia after the effective date of this subchapter shall contain the registration number of the housing accommodation to which such certificate or license applies. (Mar. 16, 1978, D.C. Law 2-54, § 205, 24 DCR 5334.)

Legislative History of Law 2-54. See note to § 45-1681.

Section referred to in sections. 45-1681, 45-1687, 45-1689, 45-1690, 45-1694.

§ 45-1687. Rent ceiling.

(a) Except to the extent provided in subsection (b) of this section, no landlord of any rental unit subject to this subchapter may charge or collect rent for such rental unit in excess of the amount computed by adding to the base rent not more than one (1) of the following percentages, whichever is applicable:

(1) two percent (2%), if the rent covers the cost of no fuel or utilities;

(2) seven percent (7%), if the rent covers the cost of heat and hot water;

(3) eight percent (8%), if the rent covers the cost of heat, hot water and general purpose electricity, but does not cover air-conditioning and other cooking fuel;

(4) nine percent (9%), if the rent covers the cost of heat, hot water, general purpose electricity, and other cooking fuel but does not cover air-conditioning; or

(5) ten percent (10%), if the rent covers the cost of heat, hot water, general purpose electricity, other cooking fuel and air-conditioning.

(b) The Commission is authorized by this section to determine at the time it makes the annual report pursuant to section 45-1683(c) whether there shall be adjustment of general applicability in the rent ceilings established by subsection (a) of this section. If the Commission determines that such adjustments are warranted, the Commission shall also determine the manner in which such adjustments are to be made and the percentage amount of the adjustment: Provided, that the percentage does not exceed the rate of change in the Consumer Price Index in the preceding twelve (12) months. In making this determination, the Commission shall consider the operating cost ratio, which is computed by dividing the average operating expenses of all housing

accommodations by the average rental income of all housing accommodations. The commission may use the landlord registration statements filed under section 45-1686 (d) and section 202 of the Rental Accommodations Act of 1975 (former D.C. Code, sec. 45-1642) in ascertaining this ratio. The Commission may use scientifically based random samples in ascertaining this ratio. The Commission may contract with a private agency or other government agency to ascertain this ratio. If such a determination is made, a landlord may implement this adjustment in the rent ceiling for a rental unit covered by title II of this subchapter only after twelve (12) consecutive calendar months have elapsed since the effective date of an adjustment in the rent ceiling for that rental unit permitted by subsection (a) of this section.

(c) At the landlord's election, in lieu of any adjustment authorized by subsections (a) and (b) of this section, the rent ceiling for an accommodation may be adjusted through a hardship petition pursuant to section 45-1693. Such a petition shall be clearly identified as an election in lieu of the general adjustments authorized by subsections (a) and (b) of this section. The Rent Administrator shall accord an expedited review process for such petitions and shall issue and publish a final decision within ninety (90) days after the petition has been filed. In the case of any petition filed under this subsection as to which a final decision has not been rendered by the Rent Administrator or his designee at the end of ninety (90) days from the date of filing thereof (and as to which the landlord is not in default in complying with any information request made under section 45-1695 (c)), the rent ceiling adjustment requested in the petition may be conditionally implemented by the landlord at the end of such ninety (90) day period. Such conditional rent ceiling adjustment shall be subject to subsequent modification by the final decision of the Rent Administrator or his designee on the petition: Provided, however, that if a hearing has been held on the petition, the Rent Administrator or his designee shall, by order served upon the parties at least ten (10) days prior to the expiration of such ninety (90) days, make a provisional finding as to the rent ceiling adjustment justified by the petition; and if he does so, the landlord may implement only the amount of the rent ceiling adjustment authorized by the said order, if any. Except to the extent modified herein, the adjustment procedures of section 45-1695 shall apply to any adjustment.

(d) If on the effective date of this subchapter the rent being charged exceeds the allowable rent ceiling, that rent shall be reduced to the allowable rent ceiling effective the next date that the rent is due: Provided, that this subsection shall not apply to any rent administratively approved under D.C. Law 1-33 as amended (former D.C. Code, secs. 45-1631 to 45-1674), or any rent increase authorized by a court of competent jurisdiction. The landlord shall notify the tenant in writing of any decrease required pursuant to this subchapter prior to the effective date of the decrease.

(e) A tenant may challenge a rent adjustment implemented pursuant to subsections (a) and (b) of this section by filing a petition with the Rent Administrator under section 45-1695. (Mar. 16, 1978, D.C. Law 2-54, § 206, 24 DCR 5334.)

Legislative History of Law 2-54. See note to § 45-1681.

Section referred to in sections. 45-1681, 45-1683, 45-1686, 45-1688, 45-1689, 45-1690, 45-1693, 45-1695, 45-1699.13, 45-1699.15.

NOTES TO DECISIONS

Decisions Under Prior Law

Purpose of prior law. — Subchapter III (the Rental Accommodations Act of 1975) was promulgated with the goal of stabilizing rents in the District by limiting

landlords to an eight percent "rate of return" on a rental unit. *Tenants of 3039 Q St., N.W. v. District of Columbia Rental Accommodations Comm'n* (D.C. 1978, 391 A.2d 785).

§ 45-1688. Adjustments in the rent ceiling.

The rent ceiling for a particular rental unit computed according to the procedures specified in section 45-1687 may be increased or decreased, as the case may be:

(a) according to section 45-1691 to allow for the cost of capital improvements;

- (b) according to section 45-1692 to allow for any increase or decrease of related services and facilities;
 - (c) according to any final order of hardship adjustment permitted under section 45-1693(c); or
 - (d) according to section 45-1694 as the result of a voluntary vacancy.
- (Mar. 16, 1978, D.C. Law 2-54, § 207, 24 DCR 5334.)

Legislative History of Law 2-54. See note to § 45-1681.

§ 45-1689. Qualifications for increases above the base rent.

(a) (1) Notwithstanding any provision of this subchapter, the rent for any rental unit shall not be increased above the base rent unless (A) the rental unit and the common elements are in substantial compliance with the Housing Regulations: Provided, that such noncompliance is not the result of tenant neglect or misconduct. Evidence of such substantial noncompliance shall be limited to housing code violation notice(s) issued by the District of Columbia Department of Housing and Community Development and such other offers of proof as the Commission may deem acceptable through its rule-making procedures; (B) the housing accommodation is registered in accordance with section 45-1686(d); (C) the landlord of such housing accommodation is properly licensed pursuant to the Housing Regulations if such regulations require his or her licensing; (D) the manager of such accommodation, when other than the owner, is properly registered pursuant to the Housing Regulations if such regulations require his or her registration; (E) notice of such increase complies with subsection (g) of this section and section 45-1699.26.

(2) Where the Rent Administrator finds that there have been excessive and prolonged violations of the Housing Regulations affecting the health, safety and security of the tenants or the habitability of the housing accommodation in which such tenants reside and that the landlord has failed to correct such violations, the Rent Administrator may roll back the rents for the affected rental units to an amount which shall not be less than the February 1, 1973 base rent for such rental units until such time as the violations have been abated.

(b) A housing accommodation and each of the rental units therein shall be deemed to be in substantial compliance with the Housing Regulations:

(1) if, for purposes of the adjustments made in the rent ceiling in section 45-1687, all substantial violations cited at the time of the last inspection of the housing accommodation prior to the effective date of the increase by the Department of Housing and Community Development were abated within a forty-five (45) day period following the issuance of the citation(s), or that time granted by the Department of Housing and Community Development, and the Department of Housing and Community Development has certified the abatement, or the owner or the tenant has certified the abatement and has presented evidence to substantiate such certification; and

(2) if, for purposes of the filing of petitions for adjustments in the rent ceiling as prescribed in section 45-1695, the housing accommodation and each of the rental units therein have been inspected at the request of each landlord by the Department of Housing and Community Development within the thirty (30) days immediately preceding the filing of a petition for adjustment.

(c) If seventy percent (70%) of the tenants of a housing accommodation sign an agreement filed with the Rent Administrator to have the rent ceiling for each rental unit in the housing accommodation adjusted by a specified percentage, the Rent Administrator shall immediately certify the Rent Administrator's approval of the increase. The agreement shall include the signature of each tenant, the number of each tenant's rental unit or apartment, and a statement that the agreement with the landlord was entered into voluntarily without any form of coercion on the part of the landlord of the housing accommodation.

(d) A tenant of a housing accommodation who after receipt of no less than five (5) days' written notice that the landlord desires an inspection of the tenant's rental unit for the purpose of determining whether the housing accommodation is in substantial compliance with the Housing Regulations, refuses without good cause to admit or cause to be admitted an employee

of the Department of Housing and Community Development for the purpose of inspecting the tenant's rental unit, or who refuses without good cause to admit or to cause to be admitted the landlord or the landlord's employee or contractor for the purpose of abating any violation of the Housing Regulations cited by the Department of Housing and Community Development, shall waive the right to challenge the validity of the proposed adjustment for reasons that the rental unit occupied by such tenant is not in substantial compliance with the Housing Regulations.

(e) Nothing in this section shall be construed to limit or abrogate a tenant's right to initiate any lawful action to correct any violation in the tenant's rental unit or in the housing accommodation in which the rental unit is located.

(f) Notwithstanding any other provision of this subchapter, no rent shall be adjusted under this subchapter for any rental unit with respect to which there is a valid written lease or rental agreement establishing the rent for such rental unit for the term of such written lease or rental agreement.

(g) Any notice of an adjustment pursuant to section 45-1687 shall contain the registration number required by section 45-1686 (d), a statement of the current rent, the increased rent, and the utilities covered by the rent which justify the adjustment or other justification for the rent increase.

(h) No adjustments in rent under this subchapter may be implemented unless and until a full one hundred and eighty (180) days have elapsed since any prior adjustment. (Mar. 16, 1978, D.C. Law 2-54, § 208, 24 DCR 5334.)

Legislative History of Law 2-54. See note to § 45-1681.
Section referred to in sections. 45-1690, 45-1694.

§ 45-1690. Rent ceiling upon termination of exemption and for newly-covered rental units.

(a) The rent ceiling for any rental unit in a housing accommodation exempted by section 45-1686 from the provisions of sections 45-1686 (d) through 45-1697 (except section 45-1696) upon the expiration or termination of such exemption shall be the rent charged during the last six (6) consecutive months of the exemption, increased by no more than five percent (5%) of the rent charged during the last six (6) consecutive months of the exemption. The increase may be effected only in accordance with the procedures specified in sections 45-1689 (g) and 45-1699.26.

(b) A structure or building, including the land appurtenant thereto, which is located in the District of Columbia in which one (1) or more rental units as defined in section 45-1681 (w) is established after the effective date of this subchapter, shall be thereafter defined as a housing accommodation for the purposes of this subchapter. If any rental unit in such a housing accommodation is not otherwise exempted by one (1) of the provisions of section 45-1686, the rent ceiling for the initial leasing period or the first year of tenancy, whichever is shorter, shall be determined by the landlord and is deemed to be the equivalent of making the computations specified in section 45-1687 (a). (Mar. 16, 1978, D.C. Law 2-54, § 209, 24 DCR 5334.)

Legislative History of Law 2-54. See note to § 45-1681.
Section referred to in section. 45-1681.

§ 45-1691. Capital improvements.

(a) On a petition by the landlord, a rent adjustment to provide for the cost of capital improvements, amortized over the useful life of such improvements or according to Internal Revenue Service guidelines, and applied on an equal basis to those rental units within the housing accommodation which benefit from such an improvement, shall be approved by the Rent Administrator: Provided, that:

(1) (A) the improvement would protect, or enhance the health, safety or security of the tenant or the habitability of the housing accommodation; or

(B) the improvement will effect a saving in the use of energy by the housing

accommodation or is intended to comply with applicable environmental protection regulations: Provided, that any savings on energy are passed on to the tenants; and

(2) (A) the amortized cost will not increase rents (aside from any increases otherwise provided for in this title) for a unit benefitting from the improvement in excess of ten percent (10%) of the rent charged before the completion of the improvement; or

(B) the Rent Administrator is satisfied based on the Rent Administrator's review and/or hearing of a petition filed under this section and such other information or survey of the affected tenants as the Rent Administrator may require that the interests of the affected tenants are being protected. A finding that the affected tenants desire the capital improvement and have agreed to the rent adjustment required to finance the capital improvement may be evidence that the interests of the tenants are being protected.

(b) Plans, contracts, specifications and permits relating to such capital improvements shall be retained for one (1) year by the landlord or his or her designated agent for such inspection by affected tenants as such tenants may request at the landlord's place of business in the District of Columbia during working hours. If the landlord does not have a place of business in the District of Columbia, the plans, contracts, specifications and permits relating to the capital improvements shall be made available upon request by the affected tenants at the Rental Accommodations Office.

(c) Action by the Rental Administrator on a rent adjustment pursuant to this section shall be taken within sixty (60) days of receipt of plans for the capital improvement approved by the appropriate District of Columbia agency or agencies. (Mar. 16, 1978, D.C. Law 2-54, § 210, 24 DCR 5334.)

Legislative History of Law 2-54. See note to § 45-1681.
Section referred to in sections. 45-1688, 45-1695.

§ 45-1692. Services and facilities.

If the Rent Administrator determines that the related services or related facilities supplied by a landlord for a housing accommodation or for any rental unit therein are substantially increased or decreased, the Rent Administrator may increase or decrease the rent ceiling, as applicable, so as to proportionally reflect the value of the change in services or facilities. (Mar. 16, 1978, D.C. Law 2-54, § 211, 24 DCR 5334.)

Legislative History of Law 2-54. See note to § 45-1681.
Section referred to in sections. 45-1688, 45-1695.

§ 45-1693. Hardship petition.

(a) Where an election has been made pursuant to section 45-1687 (c) to seek a rent adjustment through a hardship petition, the Rent Administrator shall, after review of the figures and computations set forth in the landlord's petition, allow such additional increases in rent as would generate no more than an eight percent (8%) rate of return computed according to subsection (b) of this section.

(b) In determining the rate of return for each housing accommodation, the following formula, computed over a base period of the consecutive twelve (12) months immediately preceding the filing of a petition under this subchapter, shall be used to:

(1) obtain the net income by subtracting from the sum of maximum possible rental income which can be derived from a housing accommodation and the maximum amount of all other income which can be derived from the housing accommodation the following:

(A) the operating expenses: Provided, that the following items shall not be allowed as operating expenses: (i) membership fees in organizations established to influence legislation and regulations; (ii) contributions to lobbying efforts; (iii) contributions for legal fees in the prosecution of class action cases; (iv) political contributions to candidates for office; (v) mortgage principal and interest payments; (vi) maintenance expenses for which the landlord has been

reimbursed by any security deposit, insurance settlement, judgment for damages, agreed upon payments or any other method; (vii) attorney's fees charged for services connected with counseling or litigation related to actions brought by the government of the District of Columbia due to the landlord's repeated failure to comply with applicable Housing Regulations as evidenced by housing code violation notices issued by the Department of Housing and Community Development; and (viii) any expenses for which the tenant has lawfully paid directly;

(B) the management fee, where applicable, of no more than six percent (6%) of the maximum rental income of the housing accommodation unless an additional amount is approved by the Rent Administrator pursuant to subsection (b) (1) (B) (i) of this section;

(i) if in the computation of a rate of return, a landlord seeks to deduct a management fee in excess of six percent (6%) of the maximum possible rental income, the landlord shall first file with the Rent Administrator a petition to allow the excess to be deducted. The petition shall contain such information as the Rent Administrator may require, including, but not limited to, the name of the payee. Only so much of the excess over six percent (6%) of the maximum possible rental income as is approved by the Rent Administrator shall be deducted.

(ii) if the Rent Administrator determines based on the petition and such other information as the Rent Administrator may require that the excess or part thereof is reasonable, the Rent Administrator may permit the same excess or so much of the excess as is reasonable;

(C) property taxes;

(D) depreciation expenses (computed on a straight line basis) of no more than two percent (2%) of the assessed value of the building as determined by the Mayor; no depreciation may be deducted for the value of land;

(E) vacancy losses for the housing accommodation; and

(F) uncollected rents.

(2) divide the net income by the market value of the housing accommodation to determine the rate of return.

(c) If after any increase which may be authorized pursuant to this subchapter, the landlord can show a negative cash flow for a particular housing accommodation after consideration of debt service, the Rent Administrator, upon a petition filed by the landlord, may allow such additional increases in rent as will provide a one-quarter of one percent ($\frac{1}{4}\%$) cash flow based on the maximum possible rental income for the housing accommodation: provided, that in the consideration of such petition(s), the Rent Administrator shall consider the degree of hardship which the requested increase will place upon the tenants of the housing accommodation. (Mar. 16, 1978, D.C. Law 2-54, § 212, 24 DCR 5334.)

Legislative History of Law 2-54. See note to § 45-1681.

Section referred to in sections. 45-1686, 45-1688, 45-1695.

NOTES TO DECISIONS

DECISIONS UNDER PRIOR LAW

Rent Administrator without discretion to reduce depreciation deduction. — Former § 45-1644 (a) (3) (B) (4) (iv) did not give the Rent Administrator discretion to reduce a landlord's depreciation deduction; it was only when a landlord sought a greater than two percent deduction that the Administrator had discretion to examine the request under former § 45-1645 (c). *Tenants of 3039 Q St., N.W. v. District of Columbia Rental Accommodations Comm'n* (D.C. 1978, 391 A.2d 785).

Regardless of time building owned or its tax status. — Construction of former depreciation provision (§ 45-1644 (a) (3) (B) (4) (iv) by the Rental Accommodations Commission, which disallowed any discretion on the part of the Rent Administrator to deny or lessen a landlord's claimed two percent depreciation charge regardless of how

long the building had been owned or of its status for tax purposes, was not unreasonable and did not contravene that section. *Tenants of 3039 Q St., N.W. v. District of Columbia Rental Accommodations Comm'n* (D.C. 1978, 391 A.2d 785).

Former depreciation expense deduction not an arbitrary ceiling. — The subtraction from gross income as a depreciation deduction "of no more than two percent of the assessed market value of the housing accommodation" authorized in former § 45-1644 (a) (3) (B) (4) (iv) was not meant to be an arbitrary ceiling determined according to tax principles. *Tenants of 3039 Q St., N.W. v. District of Columbia Rental Accommodations Comm'n* (D.C. 1978, 391 A.2d 785).

§ 45-1694. Vacant accommodation.

(a) Notwithstanding subsection (h) of section 45-1689, when a tenant vacates a rental unit on his or her own initiative or as a result of a notice to vacate for any of the following casuses: (1) nonpayment of rent; (2) violation of an obligation of his or her tenancy; or (3) use of the accommodation for an illegal purpose or purposes as determined by a court of competent jurisdiction, then, the rent ceiling may, at the election of the landlord, be adjusted to either (A) the rent ceiling which would otherwise be applicable to such rental unit under this subchapter plus three percent (3%) thereof, or (B) the rent ceiling of a substantially identical rental unit in the same housing accommodation: Provided, that no increase under this section shall be permitted unless the housing accommodation has been registered under section 45-1686 (b).

(b) For the purposes of this section, rental units shall be defined to be “substantially identical” where they contain essentially the same square footage, essentially the same floor plan, comparable amenities and equipment, comparable locations with respect to exposure and height (if exposure and height have previously been factors in the amount of rent charged), and are in comparable physical condition. (Mar. 16, 1978, D.C. Law 2-54, § 213, 24 DCR 5334.)

Legislative History of Law 2-54. See note to § 45-1681.
Section referred to in section. 45-1688.

§ 45-1695. Adjustment procedure.

(a) The Rent Administrator or his or her designee shall consider adjustments allowed by sections 45-1691, 45-1692 and 45-1693, or a challenge to a section 45-1687 adjustment, upon a petition filed with him or her by the landlord or tenant of such rental unit. Such petition shall be filed with the Rent Administrator on a form provided by the Rent Administrator containing such information as the Rent Administrator or the Commission may require. The Rent Administrator or his or her designee shall issue a decision and an order approving or denying, in whole or in part, each petition within one hundred and twenty (120) days after such petition is filed with the Rent Administrator. Such time may be extended only by written agreement between the landlord and tenant of such rental unit.

(b) Upon receipt of such petition, the Rent Administrator or his or her designee shall notify the nonpetitioning party (landlord or tenant) by certified mail or any other form of service which assures delivery of such petition and of the right of either party to make, within fifteen (15) days after the receipt of such notice, a written request for a hearing on the petition. If a hearing is timely requested by either party, notice of the time and place of the hearing shall be furnished the parties by certified mail or any other form of service which assures delivery at least fifteen (15) days before the commencement of such hearing. Such notice shall inform each of the parties of his or her right to retain legal counsel to represent him or her at the hearing.

(c) Each landlord of any rental unit with respect to which a petition is filed or initiated under this section shall submit to the Rent Administrator or the Rent Administrator’s designee, within fifteen (15) days after demand therefor is made, an information statement, on a form approved by the Rent Administrator, containing the information the Rent Administrator or the Commission may require.

(d) The Rent Administrator or his or her designee may consolidate petitions and hearings relating to rental units in the same housing accommodation.

(e) The Rent Administrator or his or her designee may, without holding a hearing, refuse to adjust the rent ceiling for any rental unit, and may dismiss any petition for adjustment, if a final decision has been made on a petition filed under this section or under section 212 of D.C. Law 1-33 (former D.C. Code, sec. 45-1652) for adjustment as to the same rental units within the six (6) months immediately preceding the filing of the pending petition.

(f) All petitions filed under this section, all hearings held relating thereto, and all appeals taken from decisions of the Rent Administrator or his or her designee, shall be considered and held according to the provisions of this section and to the District of Columbia Administrative Procedure Act (D.C. Code, sec. 1-1501 et seq.). In the case of any direct, irreconcilable conflict

between the provisions of this section and the District of Columbia Administrative Procedure Act, the District of Columbia Administrative Procedure Act shall apply.

(g) Decisions of the Rent Administrator or his or her designee shall be made on the record relating to any petition filed with him or her. An appeal from any decision of the Rent Administrator or his or her designee may be taken by the aggrieved party to the Commission within ten (10) days after the decision of the Rent Administrator or his or her designee; or the Commission may review a decision of the Rent Administrator or the Rent Administrator's designee on its own initiative. The Commission may reverse, in whole or in part, any decision of the Rent Administrator or the Rent Administrator's designee which it finds to be arbitrary, capricious, an abuse of discretion, not in accordance with the provisions of this subchapter, or unsupported by substantial evidence in the record of the proceedings before the Rent Administrator or his or her designee; or it may affirm, in whole or in part, the Rent Administrator's or his or her designee's decision. The Commission shall issue a decision with respect to an appeal within thirty (30) days after such an appeal was filed.

(h) No increase in rent allowed under this subchapter shall be implemented unless the tenant concerned has been given written notice pursuant to section 45-1699.26.

(i) A copy of any decision made by the Rent Administrator or his or her designee, or by the Commission under this section shall be mailed by certified mail or any other form of service which assures delivery to the parties to such decision.

(j) The Rent Administrator and, where applicable, the Commission, shall accord priority to a landlord hardship petition covering a housing accommodation for which the federal government is entitled to approve rent increases, where processing of such a petition has not begun within the thirty (30) days immediately following the filing of the petition. Processing of such petition(s) shall begin no later than five (5) days after receipt by the Rent Administrator of written requests from the landlord and from the federal agency. (Mar. 16, 1978, D.C. Law 2-54, § 214, 24 DCR 5334.)

Legislative History of Law 2-54. See note to § 45-1681.

Section referred to in sections. 45-1687, 45-1689, 45-1699.13.

§ 45-1696. Security deposit.

No person shall demand or receive a security deposit for any rental unit where no security deposit was demanded or received for such rental unit upon the effective date of this subchapter. (Mar. 16, 1978, D.C. Law 2-54, § 215, 24 DCR 5334.)

Legislative History of Law 2-54. See note to § 45-1681.

Section referred to in sections. 45-1686, 45-1690.

§ 45-1697. Judicial review.

Any person or class of persons aggrieved by a decision of the Commission, or by any failure on the part of the Commission or Rent Administrator to act within any time certain mandated by this subchapter, may seek judicial review of such decision or an order compelling such decision by filing a petition for review in the District of Columbia Court of Appeals. The Commission or the Rent Administrator may commence a civil action to enforce any rule or decision issued by them. (Mar. 16, 1978, D.C. Law 2-54, § 216, 24 DCR 5334.)

Legislative History of Law 2-54. See note to § 45-1681.

Section referred to in section. 45-1690.

NOTES TO DECISIONS

DECISIONS UNDER PRIOR LAW

Courts have limited role in reviewing rent control legislation and the wisdom or expediency of the legislative method is not subject to review. *Cobb v. Bynum* (D.C. App. 1978, 387 A.2d 1095).

Trial court erroneously declared prior rent control legislation unconstitutional as applied to landlord where

judge made no general finding of constitutional infirmity but merely projected what would happen if rent control were to be imposed upon the landlord and announced displeasure with that result. *Cobb v. Bynum* (D.C. 1978, 387 A.2d 1095).

Title III.—Rental Supplement Program

§ 45-1698. Eligibility.

(a) The rental supplement provided by this title shall be available to any tenant of a rental unit in the District of Columbia:

(1) who is a bona fide resident of a rental unit in the District of Columbia pursuant to regulations promulgated by the Mayor, or the Mayor’s designee;

(2) whose current annual income (combined with the income of all other persons residing in such rental unit) does not exceed the eligibility income limits established by the District of Columbia for persons eligible to receive housing assistance payments pursuant to section 5-1296(b);

(3) whose rent (determined without regard for the rental assistance provided herein) and utilities (utilities for the purpose of this section shall include heating fuel, water and sewer, general purpose electricity and cooking fuel) (to the extent paid by such tenant) exceed thirty-five percent (35%) of the combined gross income of all persons residing in such rental unit; and

(4) whose total assets (combined with the assets of all other persons residing in such rental unit), excluding cash surrender value in any life insurance policy in an amount of twenty-five thousand dollars (\$25,000.00) or less, personal clothing, automobile, furniture, and furnishings, do not exceed ten thousand dollars (\$10,000.00) in value.

(b) Notwithstanding any other provision in this section, no tenant shall be eligible to receive rental supplements hereunder if any person residing in the rental unit:

(1) is receiving monetary assistance either directly or indirectly under the Aid to Families with Dependent Children Program (42 U.S.C.A. sec. 600 et seq.) as amended, Aid to the Blind and Aid to the Totally and Permanently Disabled (42 U.S.C.A. sec. 1318 et seq.) as amended, or such other public assistance programs as may be specified by the Mayor: Provided, however, that a tenant receiving benefits under the Social Security Program, Old Age Survivors and Disability Income (42 U.S.C. sec. 402-31), as amended, shall not by reason of the receipt of such benefits be deemed ineligible under this paragraph; or

(2) is receiving monetary assistance under provisions of the Condominium Act of 1976 (D.C. Code sec. 5-1201 et seq.); or

(3) is residing in a publicly or privately owned rental unit administered, operated, maintained, or subsidized, in whole or in part, by an instrumentality or agency of the government of the District of Columbia or federal government: Provided, however, that a tenant who resides in a single-family rental accommodation financed under the federally insured programs of the Federal Housing Administration (Chapter 37, Title 38 U.S.C.), as amended, shall not by reason of such residence be deemed ineligible under this title.

(c) No tenant receiving rental supplements under this title shall claim a tax credit under the provisions of section 47-1567g for rent paid during the period for which such tenant received assistance hereunder.

(d) Notwithstanding any other provision of this subchapter, no tenant shall be initially eligible to receive rental supplements hereunder if the rent being paid exceeds the following amounts:

Number of Non-Elderly or Non-Handicapped Persons Residing in Unit	Rent Being Paid Per Month
1	\$170
2	205
3	307
4	340
5	374
6	409

For Senior Citizens or Handicapped, Number of Persons Residing in Unit	Rent Being Paid Per Month
1	\$307
2	307
3	307
4-6	same as non-elderly table above.

No person shall be deemed ineligible to continue to receive rental supplements under this title because a rent adjustment authorized pursuant to this subchapter after the time the initial rent supplement was granted causes the rent paid per month to exceed the maximum allowable amount as set in this subsection. However, in computing the amount of the rent supplement, that part of the rent which exceeds the maximum amount allowable under this subsection shall not be considered in the computation of the rental supplement. These limits shall be revised annually by the Mayor to reflect the average annual increase in rental housing costs in the District of Columbia.

(e) For the purpose of this title the term “gross income” shall mean all items considered income for District of Columbia or federal tax purposes, and all other monies or payments received by any individual residing in the rental unit, including, but not limited to, social security benefits, unemployment benefits, workman’s compensation, state benefits, alimony and child support, pensions, retirement benefits, annuities, monetary gifts in excess of three hundred dollars (\$300.00) and such other sums as the Mayor or the Mayor’s designee shall from time to time determine. (Mar. 16, 1978, D.C. Law 2-54, § 301, 24 DCR 5334.)

Emergency Act Amendments.
1978 — For temporary amendment of subsection (c), see sec. 5 of the District of Columbia Renters and Homeowners Tax Reduction Emergency Act of 1978 (D.C. Act 2-265, Aug. 30, 1978, 25 DCR 2436); and sec. 5 of the Second District of Columbia Renters and Homeowners Tax Reduction Emergency Act of 1978 (D.C. Act 2-305,

Nov. 27, 1978, 25 DCR 5514); and for temporary insertion of “of title VI,” see sec. 2 of the Tax Amendments Emergency Act of 1978 (D.C. Act 2-293, Nov. 1, 1978, 25 DCR 5084).
Legislative History of Law 2-54. See note to § 45-1681. Section referred to in section. 45-1699.3.

§ 45-1699. Rental supplement grants.

(a) The Mayor is hereby authorized to make rental supplement grants available on a yearly basis to eligible renters in accordance with the provisions of this title. The amount of such yearly rental supplement grant shall be determined by subtracting thirty-five percent (35%) of the combined gross income of all persons residing in such rental unit from the yearly rent due on that unit: Provided, however, that in no case shall such grant exceed fifteen percent (15%) of the gross annual rent.

(b) On or before the twentieth (20th) day of each month preceding the month in which rent on the rental unit is due, the Mayor shall forward one-twelfth ($\frac{1}{12}$) of such rental supplement grant (rental supplement payment) directly to the eligible renter at the address of the unit indicated on the renter’s application form.

(c) Each rental supplement payment shall be in the form of a check drawn against the depositories of the District of Columbia and shall be payable jointly to the applicant and (as indicated on the application form) the landlord or designee entitled to receive rental payments for the applicant’s unit.

(d) Each rental supplement payment check shall be drawn in such a manner as to become void forty-five (45) days after its issuance. (Mar. 16, 1978, D.C. Law 2-54, § 302, 24 DCR 5334.)

Legislative History of Law 2-54. See note to § 45-1681.
Section referred to in section. 45-1699.2.

§ 45-1699.1. Administration.

- (a) The Mayor shall administer the Rental Supplement Program established by this title.
- (b) The Mayor shall have the authority and power to promulgate, amend, rescind and enforce such rules, regulations and procedures for the administration of this title as are consistent with the provisions of this title.

(c) Application for a rental supplement grant shall be submitted to the Mayor and shall be on a form as designated by the Mayor. Such form shall conform insofar as possible to forms used by the federal government for its rental assistance programs. The applicant shall execute such form under oath or affirmation as to the truth of the matters contained therein. Additional verification procedures may be required as are necessary to ensure that the information contained in such forms is accurate, including, but not limited to, certified copies of tax returns of all those residing in the unit, statements of net worth of all those residing in the unit, copies of leases, rent receipts or cancelled checks, and verification of benefits from the Social Security Administration.

(d) The Mayor shall review the application and determine, in a timely fashion, the eligibility of the applicant. The applicant shall be notified in writing of approval or disapproval of the application stating the reasons for any findings of ineligibility.

(e) Action on all applications filed under this title, any hearings held relating thereto, and all appeals taken from decisions of the Mayor shall be considered and held according to the rules and regulations established under this title and the District of Columbia Administrative Procedure Act (D.C. Code, sec. 1-1501 et seq.). In the case of any direct and irreconcilable conflict between such rules and the District of Columbia Administrative Procedure Act the provisions of the District of Columbia Administrative Procedure Act shall govern.

(f) To the extent practical, all information provided by an applicant shall be confidential and shall not be disclosed in such a form as to identify the rent subsidy grant applicant. (Mar. 16, 1978, D.C. Law 2-54, § 303, 24 DCR 5334.)

Legislative History of Law 2-54. See note to § 45-1681.
Section referred to in section. 45-1699.2.

§ 45-1699.2. Continued eligibility.

(a) Sixty (60) days prior to the expiration of any rental supplement authorized under section 45-1699, the department shall notify, in writing, the tenant receiving rental supplement that the rental supplement grant is about to expire and that the tenant, if eligible and desiring to continue to receive rental supplement, must reapply within thirty (30) days upon receipt of such notice. The tenant shall reapply by executing under oath or affirmation a statement of continued eligibility on a form approved by the Mayor and submitting same to the Mayor. Except as otherwise provided in this section, the provisions of section 45-1699.1 shall apply to the processing of statements of continued eligibility under this section. Unless the Mayor determines that such person is not eligible for a rental supplement grant, such assistance shall continue for the succeeding twelve (12) months provided the tenant continues to be eligible therefor. (Mar. 16, 1978, D.C. Law 2-54, § 304, 24 DCR 5334.)

Legislative History of Law 2-54. See note to § 45-1681.

§ 45-1699.3. Termination of eligibility.

(a) If at any time a tenant receiving rental supplements hereunder fails to satisfy the requirements of section 45-1698 relating to conditions of eligibility, he shall immediately notify, in writing, the Mayor of his ineligibility. Rental supplement shall terminate on the next day thereafter upon which rent is due.

(b) If, at any time, the Mayor determines that a tenant receiving rental supplements is not, or has ceased to be, eligible therefor, he shall so notify the tenant and landlord in writing, setting forth the reasons for such determination. Rental supplement payments shall terminate on the next day the rent is due occurring at least thirty (30) days after the date such notice is given, unless, within fifteen (15) days after the receipt of such notice, the tenant submits to the Mayor a written statement, under oath or affirmation, and including any available supporting documents, asserting his reasons for alleging continued eligibility. Within thirty (30) days following the receipt of such statement and documents, the Mayor shall make the final

determination of such tenant's eligibility for continued receipt of rental supplements. (Mar. 16, 1978, D.C. Law 2-54, § 305, 24 DCR 5334.)

Legislative History of Law 2-54. See note to § 45-1681.

§ 45-1699.4. Tax exemption.

(a) All monies received by any tenant through rental supplement grants under this subchapter are hereby exempt from income taxes payable pursuant to section 47-1551 et seq. (Mar. 16, 1978, D.C. Law 2-54, § 306, 24 DCR 5334.)

Legislative History of Law 2-54. See note to § 45-1681.

Title IV.—Revenue

§ 45-1699.5. Annual rental unit fee.

Each landlord required to register under this subchapter shall pay a fee of two dollars (\$2.00) for each rental unit in a housing accommodation registered by the landlord. The fee shall be paid annually to the government of the District of Columbia at the time the landlord applies for his or her business license or a renewal thereof; or in the case of a housing accommodation for which no such license is required, at such time and in such manner as the Commission may determine. Such fees shall be deposited in a timely manner in such depository or depositories designated by the government of the District of Columbia for such purposes. (Mar. 16, 1978, D.C. Law 2-54, § 401, 24 DCR 5334.)

Legislative History of Law 2-54. See note to § 45-1681.

Title V.—Evictions and Retaliatory Action

§ 45-1699.6. Evictions.

(a) No tenant shall be evicted from a rental unit for any reason other than non-payment of rent unless he or she has been served with a written notice to vacate which meets the requirements of this subchapter. Notice of all evictions other than for non-payment of rent shall be served upon both the tenant and the Rent Administrator.

(b) No tenant shall be evicted from a rental unit, notwithstanding the expiration of his or her lease or rental agreement, so long as he or she continues to pay the rent to which the landlord is entitled for such rental unit unless:

(1) the tenant is violating an obligation of his or her tenancy and fails to correct such violation within thirty (30) days after receiving notice thereof from the landlord;

(2) a court of competent jurisdiction has determined that the tenant has performed an illegal act within such rental unit or housing accommodation;

(3) the landlord seeks in good faith to recover possession of such rental unit for his or her immediate and personal use and occupancy as a dwelling;

(4) the landlord has in good faith contracted in writing to sell the rental unit or the housing accommodation in which such rental unit is located, for the immediate and personal use of and occupancy by another person, so long as at the time the owner offers the rental unit or housing accommodation for sale, the landlord has so notified the tenant in writing and extended to the tenant an opportunity to purchase as provided in title VIII of this subchapter:

Provided, that such rental unit is not being converted to a condominium or a cooperative;

(5) The landlord seeks in good faith to recover possession of the rental unit:

(A) for the immediate purpose of making alterations or renovations to the rental unit which cannot safely or reasonably be accomplished while the rental unit is occupied so long as the plans for such alterations have been filed with the Rent Administrator and approved by the

Rent Administrator, and such plans demonstrate that the proposed alterations or renovations cannot safely or reasonably be accomplished while the unit is occupied; or

(B) for the immediate purpose of demolishing the housing accommodation in which such rental unit is located and replacing it with new construction: Provided, that a copy of the building permit for such new construction has been filed with the Rent Administrator, and: Provided, further, that the requirements of title VIII of this subchapter have been complied with; or

(C) for the immediate purpose of substantially rehabilitating the housing accommodation: Provided, that the requirements of title VIII have been complied with; or

(D) for the immediate purpose of discontinuing the housing use and occupancy of such rental unit: Provided, that (i) the landlord shall not cause the housing accommodation, of which the unit is a part, to be substantially rehabilitated for a continuous twelve (12) month period beginning from the date that such use is discontinued pursuant to this section; (ii) the landlord shall not resume any housing use of the unit for a continuous twelve (12) month period beginning from the date that such use is discontinued pursuant to this section; (iii) the landlord shall not re-rent the unit at any greater rent than would have been permitted pursuant to this subchapter had the housing use not been discontinued; and (iv) the landlord shall, on a form devised by the Rent Administrator, file with the Rent Administrator a statement including, but not limited to, general information about the housing accommodation (such as address and number of units), the reason for the discontinuance of use and future plans for the property.

(c)(1) In any case where a landlord seeks to recover possession of a rental unit under subsections (b)(3), (b)(4), (b) (5) (A), or (b) (5) (B) of this section, he or she shall first notify the tenant in writing at least ninety (90) days prior thereto, of his or her intent to recover possession of such rental unit.

(2) In any case where the landlord seeks to recover possession of a rental unit pursuant to subsection (b) (5) (C) of this section, for purposes of substantial rehabilitation, or pursuant to subsection (b) (5) (D) of this section, for purposes of housing discontinuance, such notice shall be in accordance with section 45-1699.16.

(3) In any case where a landlord seeks to recover possession of a rental unit or housing accommodation to convert such rental unit or housing accommodation to a condominium, or cooperative, or to another use, notice shall be given according to the provisions of section 408(b) of the "Condominium Act of 1976", (former D.C. Code sec. 5-1268) or sections 45-1699.10 and 45-1699.11, respectively.

(4) In any case where the landlord seeks to recover possession of a rental unit under subsection (b) (5) (D) of this section, he or she shall first notify the tenant, in writing, at least one hundred eighty (180) days prior thereto, of his or her intent to recover possession of such rental unit.

(5) Thirty (30) days notice shall be provided in all other cases.

(6) The notice required shall contain a statement detailing the reasons for the eviction, and if the housing accommodation is required to be registered by this subchapter, a statement that the housing accommodation is registered with the Commission and the registration number of the accommodation.

(d) No landlord shall demand or receive rent for any rental unit which he or she has repossessed under subsections (b) (3) or (b) (5) (D) of this section during the twelve (12) month period beginning on the date he or she recovered possession of such rental unit. No person who has purchased a rental unit which has been repossessed by a landlord under subsection (b) (4) of this section shall demand or receive rent for such rental unit during the twelve (12) month period beginning on the date on which such landlord recovered such rental unit.

(e) In the case of any rental unit which has been repossessed by a landlord under subsection (b) (5) (A) of this section, the tenant from whom the landlord repossessed such unit shall have an absolute right to re-rent such unit immediately upon completion of the renovation or alteration. Where the renovations or alterations are necessary to bring the unit into substantial compliance with the Housing Regulations, the tenant may re-rent at the same rent and under the same obligations as were in effect at the time he or she was dispossessed: Provided, that

such renovations or alterations were not made necessary by the negligent or malicious conduct of such tenant.

(f) Tenants displaced by actions under subsection (b) (5) of this section shall be entitled to receive relocation assistance as set forth in title VIII of this subchapter: Provided, that the tenants meet the eligibility criteria of that title. (Mar. 16, 1978, D.C. Law 2-54, § 501, 24 DCR 5334; July 13, 1978, D.C. Law 2-91, § 504, 24 DCR 9765; Sept. 29, 1978, D.C. Law 2-113, § 2, 25 DCR 1477; Oct. 13, 1978, D.C. Law 2-121, § 2, 25 DCR 1542.)

Effect of Amendment.

1978 — Act July 13, 1978, D.C. Law 2-91, amended section by inserting “any housing” and by deleting “as a rental accommodation” in former paragraph (5)(D)(2) of subsection (b). Act Sept. 29, 1978, D.C. Law 2-113, amended section by deleting “section 208(b) of the ‘Condominium Act of 1976’ ” and inserting in lieu thereof “section 408(b) of the ‘Condominium Act of 1976’.” Act Oct. 13, 1978, D.C. Law 2-121, amended paragraph (5)(D) of subsection (b) generally and amended paragraph (1) of subsection (c) by deleting “(b)(5)(B) or (b)(5)(D),” and inserting in lieu thereof “or (b)(5)(B)” and by redesignating paragraphs (4) and (5) as (5) and (6) and inserting new paragraph (4), and by adding after the word “rehabilitation,” the phrase “or pursuant to subsection (b)(5)(D) of this section, for purposes of housing discontinuance,” in paragraph (2) of subsection (c).

Emergency Act Amendments.

1978 — For temporary amendment providing for extension of time for notice to vacate, see secs. 2 and 3 of the Extension of Notice to Vacate Emergency Act of 1978 (D.C. Act 2-174, Apr. 10, 1978, 24 DCR 9288); sec. 2 of the First Extension to Notice of Vacate Emergency Amendment Act of 1978 (D.C. Act 2-198, May 22, 1978, 25

DCR 752); sec. 2 of the First Emergency Housing Discontinuance Regulation Act of 1978 (D.C. Act 2-246, Aug. 1, 1978, 25 DCR 1504); and sec. 2 of the Second Emergency Housing Discontinuance Regulation Act of 1978 (D.C. Act 2-289, Oct. 25, 1978, 25 DCR 4327).

Legislative History of Law 2-54. See note to § 45-1681.

Legislative History of Law 2-91. See note to § 47-3301.

Legislative History of Law 2-113. Law 2-113 was introduced in Council and assigned Bill No. 2-335, which was referred to the Committee on Housing and Urban Development. The Bill was adopted on first and second readings on June 13, 1978 and June 27, 1978, respectively. Signed by the Mayor on July 17, 1978, it was assigned Act No. 2-237 and transmitted to both Houses of Congress for its review.

Legislative History of Law 2-121. Law 2-121 was introduced in Council and assigned Bill No. 2-333, which was referred to the Committee on Housing and Urban Development. The Bill was adopted on first, amended first, and second readings on June 13, 1978, June 27, 1978 and July 11, 1978, respectively. Signed by the Mayor on August 2, 1978, it was assigned Act No. 2-251 and transmitted to both Houses of Congress for its review.

Section referred to in sections. 45-1699.19, 45-1699.20.

§ 45-1699.7. Retaliatory action.

(a) No landlord shall take any retaliatory action against any tenant who exercises any right conferred upon him or her by this subchapter, by any rule or order issued pursuant thereto, or by any other provisions of law. Retaliatory action may include any action or proceeding not otherwise permitted by law which seeks to recover possession of a rental unit; action which would increase rent, decrease services, increase the obligation of a tenant or constitute undue or unavoidable inconvenience, violate the privacy of the tenant, harass, reduce the quality or quantity of service; and any refusal to honor a lease or rental agreement or any provision of a lease or rental agreement, refusal to renew a lease or rental agreement, termination of a tenancy without cause; and any other form of threat or coercion.

(b) In determining whether an action taken by a landlord against a tenant is retaliatory action, the trier of fact shall take into consideration whether, within the six (6) months preceding such landlord's action, the tenant:

(1) has made a witnessed oral or written request to the landlord to make repairs which are necessary to bring the housing accommodation or the rental unit into compliance with the Housing Regulations;

(2) contacted appropriate officials of the government of the District of Columbia, either orally in the presence of a witness or in writing, concerning existing violations of the Housing Regulations in the rental unit he or she occupies or pertaining to the housing accommodation in which such rental unit is located, or reported to such officials suspected violations which, if confirmed, would render such rental unit or housing accommodation in noncompliance with the Housing Regulations;

(3) legally withheld all or part of his or her rent, after having given a reasonable notice to the landlord, either orally in the presence of a witness or in writing, of a violation of the Housing Regulations;

(4) organized, been a member of, or been involved in any lawful activities pertaining to a tenant organization;

(5) made an effort to secure or enforce any of his or her rights under his or her lease or contract with the landlord; or

(6) brought legal action against the landlord.

(Mar. 16, 1978, D.C. Law 2-54, § 502, 24 DCR 5334.)

Legislative History of Law 2-54. See note to § 45-1681.

Title VI.—Sale of Rental Housing

§ 45-1699.8. Sale of single-family housing accommodations.

(a) Any owner of a housing accommodation comprised of a single rental unit may sell such housing accommodation to a purchaser but only after such owner has given the tenant of such housing accommodation an opportunity to purchase such housing accommodation at a price which represents a bona fide offer of sale. A written offer shall be given to the tenant by the landlord. The offer to purchase the housing accommodation shall include, but not be limited to, the asking price for the housing accommodation and a statement of the tenant's right to purchase the housing accommodation under the provisions of this section. The tenant shall be afforded at least forty-five (45) days in which to make a contract with the landlord for the purchase of the accommodation at a mutually agreeable price and under mutually agreeable terms.

(b) The tenant shall also have the right of first refusal during the fifteen (15) days after the landlord has received a valid sales contract or other written offer to purchase from a prospective purchaser.

(c) If the housing accommodation is not sold during the six (6) months immediately following the original offer to the tenant under subsection (a) of this section and is still being offered for sale, the landlord shall make another offer to the tenant in the same manner as the first offer was made. (Mar. 16, 1978, D.C. Law 2-54, § 601, 24 DCR 5334.)

Emergency Act Amendment.

Legislative History of Law 2-54. See note to § 45-1681.

1978 — For temporary amendment of section, see sec. 2 of the Emergency Offer to Purchase Act of 1978 (D.C. Act 2-273, Sept. 1, 1978, 25 DCR 2545).

§ 45-1699.9. Sale of housing accommodations comprised of two or more rental units.

A landlord of a housing accommodation comprised of two (2) or more rental units may sell it to a purchaser but only after the landlord has done the following:

(a) in the case of a housing accommodation comprised of four (4) rental units or less, given the current tenants jointly or severally an opportunity to purchase the housing accommodation at a price which represents a bona fide offer of sale. A written notice of intent to sell shall be given to the tenants by the landlord. The notice shall include, but not be limited to, the asking price for the housing accommodation and a statement of the tenants' right to purchase the housing accommodation under the provisions of this section. The tenants shall be afforded at least forty-five (45) days in which to contract with the landlord for the purchase of the housing accommodation at a mutually agreeable price and under mutually agreeable terms. At the expiration of the forty-five (45) day period, the landlord shall provide an additional fifteen (15) day period during which any one of the current tenants may contract with the landlord for the purchase of the accommodation at a mutually agreeable price and under mutually agreeable terms; or

(b) in the case of a housing accommodation comprised of more than four (4) rental units, and which has an organization of tenants with the legal capacity to hold real estate, who have previously indicated an interest in purchasing the housing accommodation, given the tenants an opportunity to purchase the housing accommodation at a price which represents a bona fide

offer of sale. A written notice of intent to sell shall be given to the tenants by the landlord. The notice shall include, but not be limited to, the asking price for the housing accommodation and a statement of the tenants' right to purchase the housing accommodation under the provisions of this section. The tenants shall be afforded at least forty-five (45) days in which to contract with the landlord for the purchase of the housing accommodation at a mutually agreeable price and under mutually agreeable terms.

(Mar. 16, 1978, D.C. Law 2-54, § 602, 24 DCR 5334.)

Emergency Act Amendments.

1978 — For temporary amendment of section, see sec. 2 of the Emergency Multi-Family Rental Housing Purchase Act of 1978 (D.C. Act 2-277, Oct. 3, 1978, 25 DCR 3419); sec. 2 of the Emergency Offer to Purchase Act of

1978 (D.C. Act 2-273, Sept. 1, 1978, 25 DCR 2545); and sec. 2 of the Emergency Multi-Family Rental Housing Purchase Act of 1979 (D.C. Act 2-314, Dec. 14, 1978, 25 DCR 6118).

Legislative History of Law 2-54. See note to § 45-1681.

§ 45-1699.10. Conversion of a housing accommodation to a cooperative.

(a) Every tenant of a housing accommodation which the landlord seeks to convert from a rental basis to a cooperative shall be notified in writing of the landlord's intent to convert the housing accommodation to a cooperative not less than one hundred and twenty (120) days before the conversion thereof. The landlord shall also make to each tenant of the housing accommodation a bona fide offer of sale of the rental unit which such tenant occupies. The offer shall include, but not be limited to, the asking price for the rental unit and a statement of the tenant's right to purchase the rental unit under the provisions of this section. The tenant shall be afforded not less than sixty (60) days in which to contract with the landlord for the purchase of the unit at a mutually agreeable price and under mutually agreeable terms.

(b) No tenant shall be served with a notice to vacate until ninety (90) days after the tenant received notice of the owner's intent to convert and prior to the expiration of the sixty (60) day period required under subsection (a) of this section or receipt of the tenant's written rejection of the bona fide offer of sale of the rental unit, whichever occurs first.

(c) Nothing in this section shall be construed to permit the conversion of rental units to cooperative units where otherwise prohibited by law. (Mar. 16, 1978, D.C. Law 2-54, § 603, 24 DCR 5334.)

Legislative History of Law 2-54. See note to § 45-1681.
Section referred to in section. 45-1699.6.

§ 45-1699.11. Conversion of a housing accommodation to another use.

(a) Every tenant of a housing accommodation which the landlord seeks to convert from a rental basis to a use other than for non-transient residential occupancy shall be notified in writing of the landlord's intent to convert the housing accommodation not less than one hundred and twenty (120) days before the conversion thereof.

(b) No tenant of a housing accommodation which the landlord seeks to convert to a use other than for non-transient residential occupancy shall be served with a notice to vacate until ninety (90) days after the tenant received notice of the landlord's intent to convert.

(c) Nothing in this section shall be construed to permit the conversion of a housing accommodation as defined by section 45-1681 (f) to a use other than for non-transient residential occupancy if the conversion is otherwise prohibited by law. (Mar. 16, 1978, D.C. Law 2-54, § 604, 24 DCR 5334.)

Legislative History of Law 2-54. See note to § 45-1681.
Section referred to in section. 45-1699.6.

Title VII.—Substantial Rehabilitation of Housing Accommodations from Which a Tenant Was Evicted

§ 45-1699.12. Applicability of provisions.

The provisions of this title apply to the substantial rehabilitation of:

(a) any housing accommodation with respect to which the landlord has notified the tenants of the rental units therein, after the effective date of this subchapter, of the landlord's intent to substantially rehabilitate; or

(b) any housing accommodation with respect to which the landlord has notified the tenants of the rental units therein prior to the effective date of this subchapter of the landlord's intent to substantially rehabilitate.

(Mar. 16, 1978, D.C. Law 2-54, § 701, 24 DCR 5334.)

Legislative History of Law 2-54. See note to § 45-1681.

Section referred to in sections. 45-1699.19, 45-1699.20.

§ 45-1699.13. Petition for adjustment in rent ceiling due to substantial rehabilitation.

A landlord of a housing accommodation for which the allowable rent ceiling is computed according to section 45-1687 from which any tenant of any rental unit therein would be evicted for the purpose of substantial rehabilitation, must petition the Rent Administrator in order to substantially rehabilitate the housing accommodation and for an adjustment in the allowable rent ceiling upon completion of the substantial rehabilitation. The landlord's petition shall be filed and considered in accordance with the adjustment procedure set forth in section 45-1695. (Mar. 16, 1978, D.C. Law 2-54, § 702, 24 DCR 5334.)

Legislative History of Law 2-54. See note to § 45-1681.

§ 45-1699.14. Criteria for approving petition.

(a) In determining whether to approve a petition for substantial rehabilitation of a housing accommodation from which any tenant must be evicted, the Rent Administrator shall:

(1) consider the impact of the proposed substantial rehabilitation on the tenants of the housing accommodation;

(2) consider the existing condition of the housing accommodation and the rental units contained therein and the degree to which any violations of the Housing Regulations constitute an impairment to the health, welfare and safety of the tenants;

(3) examine the plans, specifications and projected costs for the substantial rehabilitation, all of which shall be made available to the Rent Administrator by the landlord of the housing accommodation; and

(4) evaluate such other factors as the Rent Administrator may deem relevant.

(b) If the Rent Administrator determines that:

(1) a housing accommodation is to be substantially rehabilitated; and

(2) the interests of tenants of the housing accommodation to be substantially rehabilitated have been fully considered, then the Rent Administrator shall approve, contingent upon the actual completion of the substantial rehabilitation in accordance with the plans, specifications and at a cost equal to or exceeding fifty percent (50%) of the market value of the housing accommodation, and adjustment in the allowable rent ceiling for the rental units contained in the housing accommodation.

(Mar. 16, 1978, D.C. Law 2-54, § 703, 24 DCR 5334.)

Legislative History of Law 2-54. See note to § 45-1681.

Section referred to in sections. 45-1699.15.

§ 45-1699.15. Amount of adjustment in rent ceiling for substantial rehabilitation.

On making the determination permitted by section 45-1699.14(b) for a housing accommodation to which title II of this subchapter is applicable, the Rent Administrator may approve for each rental unit in the housing accommodation, an adjustment in the rent ceiling during the initial leasing period or the first year of tenancy following completion of the substantial rehabilitation of the housing accommodation which is no greater than the equivalent of one hundred and twenty-five percent (125%) of the rent ceiling applicable to that rental unit in the housing accommodation prior to substantial rehabilitation. For purposes of the application of the provisions of section 45-1687, thereafter, the rent ceiling as adjusted is deemed to be the equivalent of making the computations specified in section 45-1687(a). (Mar. 16, 1978, D.C. Law 2-54, § 704, 24 DCR 5334.)

Legislative History of Law 2-54. See note to § 45-1681.

§ 45-1699.16. Notice of intent to substantially rehabilitate.

(a) The landlord of a housing accommodation which the landlord intends to substantially rehabilitate shall provide the tenants of every rental unit therein with a written statement of intent to substantially rehabilitate at least one hundred and twenty (120) days prior to the commencement of the substantial rehabilitation.

(b) The landlord's written statement of intent to substantially rehabilitate the housing accommodation shall be on such form and contain such information as the Commission, by regulation, may require. (Mar. 16, 1978, D.C. Law 2-54, § 705, 24 DCR 5334.)

Legislative History of Law 2-54. See note to § 45-1681.
Section referred to in section. 45-1699.6.

§ 45-1699.17. Notice to vacate for substantial rehabilitation.

No tenant shall be served with a notice to vacate any rental unit in a housing accommodation which the landlord intends to substantially rehabilitate until ninety (90) days after the tenant received the landlord's statement of intent to substantially rehabilitate the housing accommodation in which the tenant resides. (Mar. 16, 1978, D.C. Law 2-54, § 706, 24 DCR 5334.)

Legislative History of Law 2-54. See note to § 45-1681.

§ 45-1699.18. Tenant's right to re-rent.

Any tenant displaced from a rental unit by the substantial rehabilitation of the housing accommodation in which the rental unit is located shall have a right to re-rent the rental unit immediately upon the completion of the substantial rehabilitation. (Mar. 16, 1978, D.C. Law 2-54, § 707, 24 DCR 5334.)

Legislative History of Law 2-54. See note to § 45-1681.

Title VIII. — Relocation Assistance for Tenants Displaced by
Substantial Rehabilitation, Demolition, or
Housing Discontinuance

§ 45-1699.19. Notice of right to relocation assistance.

No landlord shall substantially rehabilitate, demolish or discontinue any housing accommodation unless there has first been served upon each tenant residing therein a written notice of intent to rehabilitate, demolish or discontinue the housing accommodation, in accordance with sections 45-1699.12, 45-1699.6 (b) (5) (B) or 45-1699.6 (b) (5) (D). Such notice shall advise the tenants of their right to relocation assistance under this act or any other D.C. Law,

and the procedures for applying for such assistance. The Commission shall prescribe the content of such notice. No tenant may be evicted from a housing accommodation which the landlord intends to substantially rehabilitate, demolish or discontinue (or which the landlord intends to sell to another person who, to the landlord’s knowledge, intends to substantially rehabilitate, demolish or discontinue it), unless this section has been complied with. Nothing contained in this section shall be construed to limit a landlord’s right to evict a tenant for non-payment of rent or violation of an obligation of the tenancy provided such action to evict is in compliance with section 45-1699.6. (Mar. 16, 1978, D.C. Law 2-54, § 801, 24 DCR 5334; Oct. 13, 1978, D.C. Law 2-121, § 2, 25 DCR 1542.)

Effect of Amendment.
1978 — Act Oct. 13, 1978, D.C. Law 2-121, amended section by rewriting the first and fourth sentences.

Emergency Act Amendments.
1978 — For temporary amendment of section, see sec. 2 of the First Emergency Housing Discontinuance Regulation Act of 1978 (D.C. Act 2-246, Aug. 1, 1978, 25

DCR 1504); and sec. 2 of the Second Emergency Housing Discontinuance Regulation Act of 1978 (D.C. Act 2-289, Oct. 25, 1978, 25 DCR 4327).

Legislative History of Law 2-54. See note to § 45-1681.

Legislative History of Law 2-121. See note to § 45-1699.6.

§ 45-1699.20. Eligibility requirements for relocation assistance.

Each landlord commencing substantial rehabilitation, demolition, or housing discontinuance on or after the effective date of this subchapter, shall pay relocation assistance in an amount calculated pursuant to section 45-1699.21, to all tenants of such housing accommodation who:

(a) were living in the rental units contained therein from which they are being displaced at the time the notice required by sections 45-1699.12, 45-1699.6(b) (5) (B) or 45-1699.6(b) (5) (D) is given; and

(b) are displaced from rental units because such housing accommodation in which they are located is to be substantially rehabilitated or demolished.

(Mar. 16, 1978, D.C. Law 2-54, § 802, 24 DCR 5334; Oct. 13, 1978, D.C. Law 2-121, § 2, 25 DCR 1542.)

Effect of Amendment.
1978 — Act October 13, 1978, D.C. Law 2-121, amended section by deleting “or demolition” and inserting in lieu thereof “, demolition, or housing discontinuance” and by deleting “section 45-1699.12 or section 45-1699.6 (b) (5) (B)” and inserting in lieu thereof the words “sections 45-1699.12, 45-1699.6 (b) (5) (B) or 45-1699.6 (b) (5) (D).”

Emergency Act Amendments.
1978 — For temporary amendment of section, see sec. 2 of the First Emergency Housing Discontinuance

Regulation Act of 1978 (D.C. Act 2-246, Aug. 1, 1978, 25 DCR 1504); and sec. 2 of the Second Emergency Housing Discontinuance Regulation Act of 1978 (D.C. Act 2-289, Oct. 25, 1978, 25 DCR 4327).

Legislative History of Law 2-54. See note to § 45-1681.

Legislative History of Law 2-121. See note to § 45-1699.6.

§ 45-1699.21. Relocation assistance payments.

(a) The amount of relocation assistance payable to a displaced tenant shall be calculated as follows:

(1) Relocation assistance in the amount of one hundred and twenty-five dollars (\$125.00) for each room in the rental unit shall be payable to the tenants or subtenants bearing the cost of removing the majority of the furnishings. For the purposes of this section, a “room” in a rental unit means any space sixty (60) square feet or larger which has a fixed ceiling and a floor and is subdivided with fixed partitions on all sides, but does not mean bathrooms, balconies, closets, pantries, kitchens, foyers, hallways, storage areas, utility rooms or the like.

(2) The Mayor shall adjust the amount to be paid tenants for relocation assistance from time to time in order to reflect changes in the cost of moving within the Washington Metropolitan Area. Such adjustments shall be made pursuant to the District of Columbia Administrative Procedure Act (D.C. Code, sec. 1-1501 et seq.), not more than once in any calendar year.

(b) Relocation assistance shall be paid to eligible tenants, not later than twenty-four (24) hours prior to the date the rental unit is to be vacated by the tenant(s) or subtenant(s): Provided, that the landlord has received at least ten (10) days (excluding Saturdays, Sundays and holidays)

advance written notice of the date upon which the unit is to be vacated. Where the tenant does not provide the landlord with at least a ten (10) day notice, the relocation assistance shall be paid within thirty (30) days after the unit is vacated.

(c) Payment of relocation assistance shall not be required with respect to any rental unit which is the subject to an outstanding judgment for possession obtained by the landlord or landlord's predecessor in interest against the tenants or subtenants for a cause of action whether such cause of action arises before or after the service of the notice of intention to rehabilitate, demolish, or discontinue housing use. If, however, the judgment for possession is based upon non-payment of rent and arises after the notice of intent to rehabilitate or to demolish has been given, then relocation assistance shall be required in an amount reduced by the amount determined to be due and owing to the landlord by the court rendering the judgment for possession. (Mar. 16, 1978, D.C. Law 2-54, § 803, 24 DCR 5334; Oct. 13, 1978, D.C. Law 2-121, § 2, 25 DCR 1542.)

Effect of Amendment.

1978 — Act October 13, 1978, D.C. Law 2-121, amended section by deleting "or to demolish" and inserting in lieu thereof ", demolish, or discontinue housing use."

Emergency Act Amendments.

1978 — For temporary amendment of section, see the First Emergency Housing Discontinuance Regulation Act of 1978 (D.C. Act 2-246, Aug. 1, 1978, 25 DCR 1504); and

sec. 2 of the Second Emergency Housing Discontinuance Regulation Act of 1978 (D.C. Act 2-289, Oct. 25, 1978, 25 DCR 4327).

Legislative History of Law 2-54. See note to § 45-1681.

Legislative History of Law 1-121. See note to § 45-1699.6.

Section referred to in section. 45-1699.20.

§ 45-1699.22. Relocation advisory services.

In ascertaining the relocation needs of tenants displaced by substantial rehabilitation, demolition, or housing discontinuance, the standards set forth in section 5-1296(a) shall be used. (Mar. 16, 1978, D.C. Law 2-54, § 804, 24 DCR 5334; Oct. 13, 1978, D.C. Law 2-121, § 2, 25 DCR 1542.)

Effect of Amendment.

1978 — Act October 13, 1978, D.C. Law 2-121, amended section by deleting "or demolition," and inserting in lieu thereof ", demolition, or housing discontinuance,".

Emergency Act Amendments.

1978 — For temporary amendment of section, see the First Emergency Housing Discontinuance Regulation Act

of 1978 (D.C. Act 2-246, Aug. 1, 1978, 25 DCR 1504); and sec. 2 of the Second Emergency Housing Discontinuance Regulation Act of 1978 (D.C. Act 2-289, Oct. 25, 1978, 25 DCR 4327).

Legislative History of Law 2-54. See note to § 45-1681.

Legislative History of Law 2-121. See note to § 45-1699.6.

§ 45-1699.23. Tenant hot line.

Within thirty (30) days from the effective date of this subchapter the Rental Accommodations Commission shall establish a "Tenant Hot Line". The primary purpose of this hot line is to provide assistance to low and moderate income tenants. To carry out this purpose, the functions and responsibilities shall include but not be limited to the following:

- (a) answering rent control procedural questions, and directing tenants toward possible courses of action in resolving problems;
 - (b) providing advice on housing code violations;
 - (c) explaining rent increases;
 - (d) providing guidance on emergency shelter;
 - (e) providing guidance on housing assistance programs;
 - (f) providing guidance in resolution of water, heating, repairs and other problems;
 - (g) providing advice on possible action in response to allegations of harassment or neglect by landlords;
 - (h) answering preliminary questions about remedies through the courts;
 - (i) providing guidance when tenants are faced with eviction; and
 - (j) providing guidance on other tenant problems.
- (Mar. 16, 1978, D.C. Law 2-54, § 805, 24 DCR 5334.)

Legislative History of Law 2-54. See note to § 45-1681.

Title IX. — Miscellaneous Penalties; Severability; Supersedence;
Service; Effective Date; Termination

§ 45-1699.24. Penalties.

(a) Any person who:

(1) demands or receives any rent for a rental unit in excess of the maximum allowable rent applicable to that rental unit under the provisions of title II of this subchapter; or

(2) substantially reduces or eliminates related services previously provided for a rental unit shall be held liable by the Rent Administrator, or Commission, as applicable, for treble the amount by which the rent exceeds the applicable rent ceiling or for seventy-five dollars (\$75.00), whichever is greater and/or for a rollback of the rent to such amount as the Rent Administrator or Commission shall determine.

(b) (1) Any person who willfully collects a rent increase after the same has been disapproved under this subchapter (until and unless such disapproval has been reversed by a court of competent jurisdiction); or

(2) any party who willfully makes a false statement in any document filed under this subchapter; or

(3) any person who willfully commits any other act in violation of any provision of this subchapter or of any final administrative order issued pursuant to this subchapter; or

(4) any person who willfully fails to do anything required under this subchapter, shall be fined not more than five thousand dollars (\$5,000.00) for each violation.

(c) Any landlord who has provided relocation assistance under this subchapter may bring a civil action to recover the amount of relocation assistance paid to any person who was not eligible to receive such assistance.

(d) Any person who knowingly or willfully makes a false or fraudulent application, report or statement in order to obtain, or for the purpose of obtaining any rental supplement grant or payment; or any person ceasing to become eligible for such grant or payment and who does not immediately notify the Mayor of his ineligibility, shall be fined not more than five thousand dollars (\$5,000.00) for each offense. Such person found guilty of making false or fraudulent reports or statements or of failing to promptly notify the Mayor of his ineligibility shall repay to the District of Columbia any and all amounts paid by the District of Columbia in reliance on such false or fraudulent application, report or statement, or all amounts paid after eligibility ceases, and shall be liable for interest on such amounts at the rate of one-half of one percent ($\frac{1}{2}\%$) per month until repaid. (Mar. 16, 1978, D.C. Law 2-54, § 901, 24 DCR 5334.)

Legislative History of Law 2-54. See note to § 45-1681.

§ 45-1699.25. Severability.

If any provision of this subchapter or any section, sentence, clause, phrase or word or the application thereof, shall in any circumstances be held invalid, the validity of the remainder of the subchapter and of the application of any such provision, section, sentence, clause, phrase or word shall not be affected. (Mar. 16, 1978, D.C. Law 2-54, § 902, 24 DCR 5334.)

Legislative History of Law 2-54. See note to § 45-1681.

§ 45-1699.26. Service.

(a) Unless otherwise provided by the Commission regulations, any information or document required to be served upon any person shall be served upon that person, or the representative designated by that person or by the law to receive service of such documents. When a party has appeared through a representative of record, service shall be made upon that representative. Service upon a person may be completed by any of the following ways:

(1) by handing the document to the person, by leaving it at such person's place of business with some responsible person in charge or by leaving it at the person's usual place of residence with a person of suitable age and discretion then present therein; or

(2) by telegram, when the content of the information or document is given to a telegraph company properly addressed and prepaid; or

(3) by mail, or deposit with the United States Postal Service properly stamped and addressed; or

(4) by any other means that is in conformity with an order of the Commission or the Rent Administrator in any proceeding.

(b) No rent increases, whether pursuant to this subchapter, the "Rental Accommodations Act of 1975", D.C. Law 1-33, effective November 1, 1975, as amended by the "Rental Accommodations Act Amendments of 1976," D.C. Law 1-122 (former D.C. Code sec. 45-1631 et seq.) or any administrative decisions issued thereunder, shall be effective until the first day on which rent is normally paid occurring more than thirty (30) days after notice of such increase is given the tenant. (Mar. 16, 1978, D.C. Law 2-54, § 904, 24 DCR 5334.)

Legislative History of Law 2-54. See note to § 45-1681.

Section referred to in sections. 45-1689, 45-1690, 45-1695.

§ 45-1699.27. Termination.

This subchapter shall terminate on September 30, 1980. (Mar. 16, 1978, D.C. Law 2-54, § 906, 24 DCR 5334.)

Legislative History of Law 2-54. See note to § 45-1681.

CHAPTER 18. — HOME PURCHASE ASSISTANCE FUND

Sec.

45-1801. Established.

45-1802. Deposits to credit of fund.

45-1803. Availability.

45-1804. Promulgation of rules and regulations —
Contents of loan agreements.

Sec.

45-1805. Annual audit — Compensation of deficiencies in working capital.

§ 45-1801. Established.

There is hereby established in the District of Columbia and there is authorized, to be appropriated out of the revenues of the District of Columbia, funds not to exceed one million dollars (\$1,000,000) for a permanent revolving fund to be known as the Home Purchase Assistance Fund (hereinafter referred to as the "fund") to provide financial assistance to residents of the District of Columbia of lower incomes for the purposes of enabling them to purchase decent, safe and sanitary homes in the District of Columbia. (Sept. 12, 1978, D.C. Law 2-103, § 2, 25 DCR 1977.)

Emergency Act Amendment.

1978 — For temporary enactment of chapter, see the Home Purchase Assistance Fund Emergency Authorization Act of 1978 (D.C. Act 2-213, July 1, 1978, 25 DCR 1972).

Legislative History of Law 2-103. Law 2-103 was introduced in Council and assigned Bill No. 2-316, which was referred to the Committee on Housing and Urban Development. The Bill was adopted on first and second

readings on June 13, 1978 and June 27, 1978, respectively. Signed by the Mayor on July 1, 1978, it was assigned Act No. 2-214 and transmitted to both Houses of Congress for its review.

Short title. The first section of the act of Sept. 12, 1978, D.C. Law 2-103, 25 DCR 1977, provided "That this act may be cited as the 'Home Purchase Assistance Fund Act of 1978.'"

§ 45-1802. Deposits to credit of fund.

There shall be deposited to the credit of the fund such amounts as may be appropriated pursuant to this chapter grants and gifts from public and private sources to the fund or to the

District of Columbia for the purposes of the fund; repayments of principal and any interest on loans provided from the fund; proceeds realized from the liquidation of any security interests held by the District of Columbia under the terms of any assistance provided the fund; interest earned from the deposit or investment of monies of the fund; and all other revenues, receipts and fees of whatever nature derived from the operation of the fund. (Sept. 12, 1978, D.C. Law 2-103, § 3, 25 DCR 1977.)

Legislative History of Law 2-103. See note to § 45-1801.

Compiler's change. The second "of" in the third line of this section appeared in the original act as "or."

§ 45-1803. Availability.

The fund shall be available, without fiscal year limitation, for making loans; for providing other forms of financial assistance under terms and conditions prescribed by the Mayor of the District of Columbia (hereinafter referred to as the "Mayor"); and for the principal purpose of enabling a recipient thereof to make a down payment toward the purchase of a home in the District of Columbia as his principal place of residence. Such financial assistance may be used in conjunction with other available home purchase assistance programs. Where the applicable law or regulations of such other programs prohibit assistance in the form of loans, the Mayor is authorized to provide other forms of financial assistance. (Sept. 12, 1978, D.C. Law 2-103, § 4, 25 DCR 1977.)

Legislative History of Law 2-103. See note to § 45-1801.

§ 45-1804. Promulgation of rules and regulations — Contents of loan agreements.

(a) The Mayor is authorized to promulgate rules and regulations to govern the operation of the fund, including but not limited to, rules and regulations establishing standards for determining the eligibility and selection of applicants; procedures for applying for assistance and for notifying applicants (including the development of appropriate forms); and criteria for determining the terms and conditions under which loans or other forms of financial assistance may be made from the fund which, among things, shall reflect the ability of the recipient to pay and may provide for the deferred payment or forgiveness of loans. The rules and regulations issued by the Mayor for the purpose of implementing the provisions of this chapter shall be submitted by the Mayor to the Council of the District of Columbia for a forty-five (45) calendar day review period, excluding days of Council recess. No such rules or regulations shall take effect until the end of the forty-five (45) calendar day period beginning on the day such rules or regulations are transmitted by the Mayor to the Chairman of the Council, and then only if during such period, the Council does not adopt a resolution disapproving such rules and regulations in whole or in part.

(b) Any loan agreement entered into pursuant to such rules and regulations shall provide that:

(1) all applications for and recipients of financial assistance from the fund shall be residents of the District of Columbia and a member of a household consisting of two (2) or more persons who are related by blood or marriage; and

(2) if the home purchased ceases to be the primary residence of the recipient of financial assistance from the fund, the payments to such fund by the recipient shall be accelerated on terms and conditions prescribed by the Mayor: Provided, that such obligation shall not be inconsistent with the applicable law or regulations of any federal home purchase assistance program made available to the recipient.

(Sept. 12, 1978, D.C. Law 2-103, § 5, 25 DCR 1977.)

Legislative History of Law 2-103. See note to § 45-1801.

§ 45-1805. Annual audit — Compensation of deficiencies in working capital.

(a) An annual audit of the operations of the fund shall be conducted by the District of Columbia Office of Internal Audits and Inspections.

(b) Not later than six (6) months after the end of each fiscal year, the Mayor shall submit to the Congress of the United States and to the Council of the District of Columbia a report of the financial condition of the fund and the results of the operations for such fiscal year.

(c) The Mayor shall include in the budget estimates of the District of Columbia for each fiscal year and there is authorized, to be appropriated annually, such amounts out of the revenues of the District of Columbia as may be required to compensate any deficiency in the working capitalization of one million dollars (\$1,000,000) for the funds. (Sept. 12, 1978, D.C. Law 2-103, § 6, 25 DCR 1977.)

Legislative History of Law 2-103. See note to § 45-1801.

TITLE 46.—SOCIAL SECURITY

Chap.	Sec.
3. Unemployment Compensation	46-301

CHAPTER 3.—UNEMPLOYMENT COMPENSATION

§ 46-301. Definitions.

Emergency Act Amendments.
1978 — For temporary amendment of section, see sec. 2 of the Second Emergency District of Columbia Unemployment Compensation Act Amendments of 1978 (D.C. Act 2-166, Mar. 28, 1978, 24 DCR 9243); sec. 2 of the Third Emergency District of Columbia Unemployment Compensation Act Amendments of 1978 (D.C. Act 2-227,

July 10, 1978, 25 DCR 1433); sec. 2 of the First Emergency District of Columbia Unemployment Compensation Act Compulsory Amendments of 1978 (D.C. Act 2-266, Aug. 30, 1978, 25 DCR 2484); and sec. 2 of the Second Emergency District of Columbia Unemployment Compensation Act Compulsory Amendments of 1978 (D.C. Act 2-303, Nov. 27, 1978, 25 DCR 5480).

NOTES TO DECISIONS

Purpose of unemployment compensation law is to protect employees against economic dependency caused by temporary unemployment and to reduce the necessity of other welfare programs. *Jones v. District Unemployment Comp. Bd.* (D.C. 1978, 395 A.2d 392).

“Directed and controlled” relates to merits of work performed. — For purposes of determining a worker’s place of direction and control pursuant to subdivision (b) (2), the phrase “directed and controlled” encompasses more than the setting of work hours and similar personnel policies; it also has relation to the merits of the work performed. Thus where an employee of a California firm under contract to a federal agency based in the District of Columbia was under the control of the firm insofar as administrative matters were concerned but received training, scheduling and guidance from the agency, she received direction and control for her services in the District of Columbia. *Haugness v. District Unemployment Comp. Bd.* (D.C. 1978, 386 A.2d 700).

Voluntary dismissal payments have been considered “earnings” since 1972. *Dyer v. District of Columbia Unemployment Comp. Bd.* (D.C. 1978, 392 A.2d 1).

Voluntary dismissal payments negate “unemployed” status. — An individual is not “unemployed” for a given pay period if he receives voluntary dismissal payments for that period. *Dyer v. District of Columbia Unemployment Comp. Bd.* (D.C. 1978, 392 A.2d 1).

But not self-employment subsequent to termination of other employment. — In light of the removal of the explicit proscription against self-employment formerly found in subdivision (e), the public policy preference for compensation through employment rather than welfare compensation and the existence of other statutory safeguards against excessive or unjustified benefits, subdivision (e) was interpreted as erecting no barrier to unemployment compensation for persons engaging in self-employment subsequent to the termination of their employment by another. *Cumming v. District Unemployment Comp. Bd.* (D.C. 1978, 382 A.2d 1010).

§ 46-303. Employer contributions.

Emergency Act Amendments.
1978 — For temporary amendment of section, see sec. 2 of the Second Emergency District of Columbia Unemployment Compensation Act Amendments of 1978 (D.C. Act 2-166, Mar. 28, 1978, 24 DCR 9243); sec. 2 of the Third Emergency District of Columbia Unemployment Compensation Act Amendments of 1978 (D.C. Act 2-227,

July 10, 1978, 25 DCR 1433); sec. 2 of the First Emergency District of Columbia Unemployment Compensation Act Compulsory Amendments of 1978 (D.C. Act 2-266, Aug. 30, 1978, 25 DCR 2484); and sec. 2 of the Second Emergency District of Columbia Unemployment Compensation Act Compulsory Amendments of 1978 (D.C. Act 2-303, Nov. 27, 1978, 25 DCR 5480).

NOTES TO DECISIONS

Disqualification case remanded because of decision’s ultimate effect on employer’s contributions. — Appellate court remanded case for redetermination of disqualification under § 46-310(b), despite the Board’s prior failure to develop sufficient evidence of misconduct, because the employer’s contribution to the unemployment

compensation fund would be by the claims experience of its employees. *Jones v. District Unemployment Comp. Bd.* (D.C. 1978, 395 A.2d 392).

Cited in *Cumming v. District Unemployment Comp. Bd.* (D.C. 1978, 382 A.2d 1010).

§ 46-306. Deposit in unemployment trust fund.**Emergency Act Amendments.**

1978 — For temporary amendment of section, see sec. 2 of the First Emergency District of Columbia Unemployment Compensation Act Compulsory Amendments of 1978 (D.C. Act 2-266, Aug. 30, 1978, 25

DCR 2484); and sec. 2 of the Second Emergency District of Columbia Unemployment Compensation Act Compulsory Amendments of 1978 (D.C. Act 2-303, Nov. 27, 1978, 25 DCR 5480).

§ 46-307. Amount and duration of benefits.**Emergency Act Amendments.**

1978 — For temporary amendment of section, see sec. 2 of the Second Emergency District of Columbia Unemployment Compensation Act Amendments of 1978 (D.C. Act 2-166, Mar. 28, 1978, 24 DCR 9243); sec. 2 of the Third Emergency District of Columbia Unemployment Compensation Act Amendments of 1978 (D.C. Act 2-227,

July 10, 1978, 25 DCR 1433); sec. 2 of the First Emergency District of Columbia Unemployment Compensation Act Compulsory Amendments of 1978 (D.C. Act 2-266, Aug. 30, 1978, 25 DCR 2484); and sec. 2 of the Second Emergency District of Columbia Unemployment Compensation Act Compulsory Amendments of 1978 (D.C. Act 2-303, Nov. 27, 1978, 25 DCR 5480).

§ 46-309. Eligibility for benefits.**Emergency Act Amendments.**

1978 — For temporary amendment of section, see sec. 2 of the Second Emergency District of Columbia Unemployment Compensation Act Amendments of 1978 (D.C. Act 2-166, Mar. 28, 1978, 24 DCR 9243); sec. 2 of the Third Emergency District of Columbia Unemployment Compensation Act Amendments of 1978 (D.C. Act 2-227,

July 10, 1978, 25 DCR 1433); sec. 2 of the First Emergency District of Columbia Unemployment Compensation Act Compulsory Amendments of 1978 (D.C. Act 2-266, Aug. 30, 1978, 25 DCR 2484); and sec. 2 of the Second Emergency District of Columbia Unemployment Compensation Act Compulsory Amendments of 1978 (D.C. Act 2-303, Nov. 27, 1978, 25 DCR 5480).

NOTES TO DECISIONS

Subsection (d) is applicable to persons regardless of their geographical location. *Lechter-Siegel v. District Unemployment Comp. Bd.* (D.C. 1978, 395 A.2d 57).

“Available for work” construed. — In order to be available for work within the meaning of subdivision (d) a claimant must be genuinely attached to the labor market and making adequate contacts for work under the circumstances. *Hawkins v. District Unemployment Comp. Bd.* (D.C. 1978, 390 A.2d 973).

The principal test for eligibility is genuine attachment to the labor market, a test which necessitates careful examination of the factual circumstances presented by a claimant. *Cumming v. District Unemployment Comp. Bd.* (D.C. 1978, 382 A.2d 1010).

Claimant is not available for work if he unreasonably restricts his job search. *Hawkins v. District Unemployment Comp. Bd.* (D.C. 1978, 390 A.2d 973).

Inability to accept full-time work does not per se render claimant ineligible for benefits, although a refusal to seek full-time employment may in fact negate a claimant's availability for work absent a showing of good cause under subdivision (d). *Hawkins v. District Unemployment Comp. Bd.* (D.C. 1978, 390 A.2d 973).

Board's findings on adequacy of work search not supported by substantial evidence. — Where the Board

did not consider the type of employment for which an applicant was suited in its evaluation of the adequacy of her work-search efforts and where the record did not reveal the circumstances upon which the Board concluded that her work-search program was inadequate, the Board's findings were not supported by substantial evidence. *Kober v. District Unemployment Comp. Bd.* (D.C. 1978, 384 A.2d 633).

Case remanded for consideration of good cause excuse. — Failure of appeals examiner to expressly consider whether unavailability for work was excusable due to good cause required remand of the case to the Board with directions to conduct further proceedings in order to determine whether the unavailability was excusable under the good cause proviso of subdivision (d). *Duncan v. District Unemployment Comp. Bd.* (D.C. 1978, 384 A.2d 645).

Claimant otherwise eligible for benefits but unable to fulfill the reporting requirements of subsection (d) because she had moved to Belgium was entitled to have the Board consider whether she had shown good cause to excuse her failure to report, under the proviso of subsection (d). *Lechter-Siegel v. District Unemployment Comp. Bd.* (D.C. 1978, 395 A.2d 57).

§ 46-310. Disqualification for benefits.**Emergency Act Amendments.**

1978 — For temporary amendment of section, see sec. 2 of the First Emergency District of Columbia Unemployment Compensation Act Compulsory Amendments of 1978 (D.C. Act 2-266, Aug. 30, 1978, 25

DCR 2484); and sec. 2 of the Second Emergency District of Columbia Unemployment Compensation Act Compulsory Amendments of 1978 (D.C. Act 2-303, Nov. 27, 1978, 25 DCR 5480).

NOTES TO DECISIONS

“Misconduct” construed. — “Misconduct” must be an act of wanton or willful disregard of the employer’s interest, a deliberate violation of the employer’s rules, a disregard of standards of behavior which the employer has the right to expect of his employee or negligence in such degree or recurrence as to manifest culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer’s interest or of the employee’s duties and obligations to the employer. Implied in all these standards, however, is a requirement that the employee be on notice that should he proceed he will damage some legitimate interest of the employer for which he could be discharged. *Jones v. District Unemployment Comp. Bd.* (D.C. 1978, 395 A.2d 392); *Williams v. District Unemployment Comp. Bd.* (D.C. App. 1978, 383 A.2d 345).

Employer has burden of proving misconduct within the meaning of subsection (b). *Jones v. District Unemployment Comp. Bd.* (D.C. 1978, 395 A.2d 392).

But unnecessary to demonstrate discharge procedurally proper. — Under subsection (b) an employer need not demonstrate that the discharge for misconduct was procedurally proper. *Jones v. District Unemployment Comp. Bd.* (D.C. 1978, 395 A.2d 392).

Board and employer must concur on reasons for discharge. — Finding of misconduct by Board under subsection (b) must be based fundamentally on the reasons specified by the employer for the discharge. *Jones v. District Unemployment Comp. Bd.* (D.C. 1978, 395 A.2d 392).

Employer’s concept of misconduct may not comport with statute. — Employee discharged for misconduct based on employer’s concept of that term is not necessarily guilty of misconduct within the meaning of this section. *Jones v. District Unemployment Comp. Bd.* (D.C. 1978, 395 A.2d 392); *Williams v. District Unemployment Comp. Bd.* (D.C. 1978, 383 A.2d 345).

Basis for discharge must be reasonable. — In order to disqualify a claimant from benefits for misconduct, the basis for discharge must be reasonable, considered not

with reference to the business interest of the employer but with reference to the purpose of statutory insurance, which is to protect employees against economic dependency caused by temporary unemployment and to reduce the necessity of relief or other welfare programs. *Williams v. District Unemployment Comp. Bd.* (D.C. 1978, 383 A.2d 345).

Participation in writing of memoranda proscribed by employer was misconduct for which an employee was properly dismissed. *Dyer v. District of Columbia Unemployment Comp. Bd.* (D.C. App. 1978, 392 A.2d 1).

Throwing flashlight at customer’s glass door misconduct. — Meter reader’s action in throwing his flashlight at a customer’s glass storm door at eye level while the customer was standing behind it was not justified by the customer’s slur and constituted misconduct. *Williams v. District Unemployment Comp. Bd.* (D.C. 1978, 383 A.2d 345).

Case remanded because of decision’s ultimate effect on employer’s contributions to fund. — Appellate court remanded case for redetermination of disqualification under subsection (b), despite the Board’s prior failure to develop sufficient evidence of misconduct, because the employer’s contribution to the unemployment compensation fund would be affected by the claims experience of its employees. *Jones v. District Unemployment Comp. Bd.* (D.C. 1978, 395 A.2d 392.)

Evidence insufficient that claimant discharged for abandoning job. — *Jones v. District Unemployment Comp. Bd.* (D.C. 1978, 395 A.2d 392).

Evidence insufficient to justify employee’s conduct. — *Jones v. District Unemployment Comp. Bd.* (D.C. 1978, 395 A.2d 392).

Cited in *Duncan v. District Unemployment Comp. Bd.* (D.C. 1978, 384 A.2d 645); *Worrell v. District Unemployment Comp. Bd.* (D.C. 1978, 382 A.2d 1036); *Cumming v. District Unemployment Comp. Bd.* (D.C. 1978, 382 A.2d 1010).

§ 46-311. Determination of claims.

NOTES TO DECISIONS

Persons qualified to receive welfare benefits entitled to due process. — Welfare benefits are a matter of statutory entitlement, and persons qualified to receive such benefits are entitled to due process. *Jones v. District Unemployment Comp. Bd.* (D.C. 1978, 395 A.2d 392).

Hearings under this section must conform with Administrative Procedure Act (§ 1-1501 et seq.) requirements. *Jones v. District Unemployment Comp. Bd.* (D.C. 1978, 395 A.2d 392).

Claimant not entitled to see evaluations not relevant to discharge. — Examiner’s refusal to allow claimant to see previous supervisors’ evaluations did not violate his right to a fair hearing where the claimant had not been discharged for poor job performance and he was given access to all the relevant material in his personnel file. *Jones v. District Unemployment Comp. Bd.* (D.C. 1978, 395 A.2d 392).

Parties to hearing are not bound by rules of evidence. *Jones v. District Unemployment Comp. Bd.* (D.C. 1978, 395 A.2d 392).

Sequestering of witnesses is matter resting within Board’s sound discretion. *Jones v. District Unemployment Comp. Bd.* (D.C. 1978, 395 A.2d 392).

Board without authority to extend time limit. — Board had no authority under this section to extend ten day time limit as to applicant who had appealed three days late from a determination that he had received benefits to which he was not entitled, even though he explained the late filing as due to his wife’s death. *Worrell v. District Unemployment Comp. Bd.* (D.C. 1978, 382 A.2d 1036).

But whether employer’s appeal tolls period remains undecided. — *Gaskins v. District Unemployment Comp. Bd.*, D.C. 1974, 315 A.2d 567 (which held that the Board could not extend time limit for taking appeal), does not resolve the question whether an employer’s timely appeal tolls the ten day period within which the employee must note his or her own appeal under subsection (b). *Worrell v. District Unemployment Comp. Bd.* (D.C. 1978, 382 A.2d 1036).

Cited in *Kober v. District Unemployment Comp. Bd.* (D.C. 1978, 384 A.2d 633); *Williams v. District Unemployment Comp. Bd.* (D.C. 1978, 383 A.2d 345).

§ 46-312. Court review.

NOTES TO DECISIONS

Review in Court of Appeals is limited to a determination of whether the Board's findings of fact are supported by substantial evidence in the record and whether the Board correctly applied the relevant law. *Dyer v. District of Columbia Unemployment Comp. Bd.* (D.C. 1978, 392 A.2d 1).

Cited in *Worrell v. District Unemployment Comp. Bd.* (D.C. 1978, 382 A.2d 1036); *Cumming v. District Unemployment Comp. Bd.* (D.C. 1978, 382 A.2d 1010); *Jacobs v. District Unemployment Comp. Bd.* (D.C. 1978, 382 A.2d 282).

§ 46-313. Administration.

Emergency Act Amendments.
1978 — For temporary amendment of section, see sec. 2 of the First Emergency District of Columbia Unemployment Compensation Act Compulsory Amendments of 1978 (D.C. Act 2-266, Aug. 30, 1978, 25

DCR 2484); and sec. 2 of the Second Emergency District of Columbia Unemployment Compensation Act Compulsory Amendments of 1978 (D.C. Act 2-303, Nov. 27, 1978, 25 DCR 5480).

NOTES TO DECISIONS

Effect of delegation of administrative authority to Board. — By delgating administrative authority to the Board, Congress has constituted that body as the primary interpreters of this chapter, and as a consequence courts should give deference to the construction placed on this

chapter by the Board. *Cumming v. District Unemployment Comp. Bd.* (D.C. 1978, 382 A.2d 1010).
Cited in *Bethel v. Jefferson* (1978, 589 F.2d 631); *Jones v. District Unemployment Comp. Bd.* (D.C. 1978, 395 A.2d 392).

§ 46-315. District Unemployment Compensation Board.

Emergency Act Amendments.
1978 — For temporary amendment of section, see sec. 2 of the First Emergency District of Columbia Unemployment Compensation Act Compulsory Amendments of 1978 (D.C. Act 2-266, Aug. 30, 1978, 25

DCR 2484); and sec. 2 of the Second Emergency District of Columbia Unemployment Compensation Act Compulsory Amendments of 1978 (D.C. Act 2-303, Nov. 27, 1978, 25 DCR 5480).

§ 46-316. Reciprocal arrangements.

NOTES TO DECISIONS

Court of Appeals cannot compel reciprocal arrangements with foreign governments. — Although the Board is charged with the power to seek agreement and possibly to agree with a foreign power respecting compensation benefits, the Court of Appeals is not empowered to compel such a result. *Lechter-Siegel v. District Unemployment Comp. Bd.* (D.C. 1978, 395 A.2d 57).

Cited in *Cumming v. District Unemployment Comp. Bd.* (D.C. 1978, 382 A.2d 1010); *Jacobs v. District Unemployment Comp. Bd.* (D.C. 1978, 382 A.2d 282).

§ 46-319. Penalties.

Emergency Act Amendments.
1978 — For temporary amendment of section, see sec. 2 of the First Emergency District of Columbia Unemployment Compensation Act Compulsory Amendments of 1978 (D.C. Act 2-266, Aug. 30, 1978, 25

DCR 2484); and sec. 2 of the Second Emergency District of Columbia Unemployment Compensation Act Compulsory Amendments of 1978 (D.C. Act 2-303, Nov. 27, 1978, 25 DCR 5480).

NOTES TO DECISIONS

Violation occurs at moment false representation or omission of material fact is made with the intent to obtain or increase any benefit, and there is no indication whatsoever that actual receipt of unemployment compensation funds is required nor that the party to whom

the misrepresentation is made must rely on it to his or the Board's detriment. *Lewis v. United States* (D.C. 1978, 389 A.2d 306).
Knowledge requirement of subsection (e) is subjective, relating to the particular individual charged

with a fraud rather than to a hypothetical reasonable person. *Jacobs v. District Unemployment Comp. Bd.* (D.C. 1978, 382 A.2d 282).

But actual knowledge not required. — The knowledge required for fraud under subsection (e) does not necessarily mean actual knowledge of falsity, for the scienter element is satisfied if a representation is recklessly and positively made without knowledge of its truth. *Jacobs v. District Unemployment Comp. Bd.* (D.C. 1978, 382 A.2d 282).

Significance of obviousness of misrepresentation. — The fact that a misrepresentation was one that a man of ordinary care and intelligence in the maker’s situation would have recognized as false is not enough to impose liability for a knowing misrepresentation under subsection (e), but it is evidence from which lack of honest belief may be inferred. *Jacobs v. District Unemployment Comp. Bd.* (D.C. 1978, 382 A.2d 282).

Claimant’s intellectual capacity is matter to be taken into account in subsection (e) cases in determining

credibility if the claimant testifies that he believed his representation to be true. *Jacobs v. District Unemployment Comp. Bd.* (D.C. 1978, 382 A.2d 282).

Particularized findings required for subsection (e) disqualification. — Absent particularized findings of fraud with reference to an individual claimant, a denial of unemployment benefits under subsection (e) would be arbitrary, capricious and an abuse of discretion. *Jacobs v. District Unemployment Comp. Bd.* (D.C. 1978, 382 A.2d 282).

Section is identical with attempted false pretenses proscribed by §§ 22-103 and 22-1301. *Lewis v. United States* (D.C. 1978, 389 A.2d 306).

Conviction for false pretenses under § 22-1301 was proper since the elements of a misdemeanor under this section are not those necessary to establish false pretenses under § 22-1301 and Congress did not intend that this section provide the exclusive criminal sanction for unemployment compensation fraud. *Lewis v. United States* (D.C. 1978, 389 A.2d 306).

§ 46-327. Pregnancy.

Emergency Act Amendments.
1978 — For temporary repeal of section, see sec. 2 of the First Emergency District of Columbia Unemployment Compensation Act Compulsory Amendments of 1978 (D.C.

Act 2-266, Aug. 30, 1978, 25 DCR 2484); and sec. 2 of the Second Emergency District of Columbia Unemployment Compensation Act Compulsory Amendments of 1978 (D.C. Act 2-303, Nov. 27, 1978, 25 DCR 5480).

TITLE 47.—TAXATION AND FISCAL AFFAIRS

Cross reference. For home purchase assistance fund, see § 45-1801 et seq.

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15. Income and Franchise Taxes	47-1501
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CHAPTER 1.—GENERAL PROVISIONS

Sec.
47-120.2. Independent annual audit of financial operations of District government — Reports.

§ 47-101. Fiscal year for District of Columbia — Commencement.

Temporary Commission on Financial Oversight of the District of Columbia. Title I of act June 5, 1978, Pub. L. 95-288, provided

“For salaries and expenses necessary to carry out the provisions of the Act creating the Temporary Commission on Financial Oversight of the District of Columbia (Public Law 94-399), \$3,000,000, which shall be available until expended: *Provided*, That the Temporary Commission on Financial Oversight of the District of Columbia shall have the power to appoint, fix the compensation of, and remove an Executive Director and additional staff members without regard to chapter 51, subchapters III and VI of chapter 53, and chapter 75 of title 5, United States Code, and those provisions of such title relating to the appointment in the competitive service. The Executive Director may be paid compensation at a rate not to exceed the rate prescribed for level IV of the Federal Executive Salary Schedule.”

Act Sept. 26, 1978, Pub. L. 95-386, provided:

“That sections 2(c) and 3(c) of the Act entitled ‘An Act to provide for an independent audit of the financial condition of the government of the District of Columbia’, approved September 4, 1976 (Public Law 94-399, 90 Stat. 1205), are each amended by striking out ‘fixed price’.

“SEC. 2. Section 2 of such Act is amended by adding at the end thereof the following new subsections:

“(h) The Commission may select the government of the District of Columbia as a qualified person under subsection (a), and the chairman of the Commission may enter into contracts with the government of the District of Columbia under subsection (c).

“(i)(1) The Commission is entitled, through an authorized representative, to inspect the facilities and audit the books and records of any contractor performing a contract under this Act, and any subcontractor performing any subcontract under a contract made by the Commission under this Act.

“(2) Each contract entered into under this Act shall provide that the Comptroller General and his representatives are entitled, until the expiration of three years after final payment, to examine any pertinent books, documents, papers, or records of the contractor or any of his subcontractors engaged in the performance of and involving transactions relating to such contract or subcontract.

“(j) Payments made by the Commission to the government of the District of Columbia under contracts entered into pursuant to the authority of this Act shall be available for matching purposes under any federally funded grant program provided that the grant is for a purpose similar to any purpose specified in section 2(a) of this Act.”.

“SEC. 3. Sections 3 and 4 of such Act are amended by striking out ‘1979’ each place it appears therein and inserting in lieu thereof ‘1982’”.

§ 47-120.2. Independent annual audit of financial operations of District government — Reports.

(a) For the fiscal year beginning October 1, 1982, and each fiscal year thereafter, the government of the District of Columbia shall conduct, out of funds of the government of the District of Columbia, an audit of the financial operations of such government. Each such audit shall be conducted by a certified public accountant licensed in the District of Columbia and carried out in accordance with generally accepted auditing standards and the financial statements shall be prepared in accordance with generally accepted accounting principles.

(b) For the purpose of conducting an audit for each such fiscal year as required by subsection (a) of this section, the Mayor of the District of Columbia shall, on or after January 2, 1982, select, subject to the advice and consent of the Council of the District of Columbia, a qualified person to conduct such audits for the fiscal year commencing October 1, 1982, and the next following three fiscal years. Thereafter, each individual elected as Mayor in a general election held for Mayor of the District of Columbia, shall on or after January 2 next following his or her election to, and the assuming of the Office of Mayor, select, subject to the advice and consent of the Council of the District of Columbia, a qualified person to conduct such audits for the fiscal year commencing October 1 of the calendar year in which such Mayor takes office, and the next following three fiscal years. The person previously selected for a four-year period shall not succeed himself or herself. If the Council fails to act on any such selection within a thirty-day period following the date on which it receives from the Mayor the name of such person so selected, the Mayor shall be authorized to enter into a contract with that person for the conduct of such audits. If any person so selected by the Mayor to conduct any such audits for such fiscal years is rejected by the Council, the Mayor shall submit to the Council the name of another qualified person selected by the Mayor to conduct such audits. In the event that the Council rejects the second person so selected by the Mayor, the Mayor shall, within thirty days following that rejection, notify the chairman of the Committee on Appropriations of the Senate and the chairman of the Committee on Appropriations of the House of Representatives, in writing, of that fact. Within fifteen days following the receipt of that notice, such chairmen shall jointly select a person to conduct such audits and shall inform the Mayor, in writing, of the name of the person so selected. Within ten days following the receipt by the Mayor of such name, the Mayor shall enter into a contract with such person pursuant to which that person shall conduct such audits for such fiscal years as herein provided.

(c) The Mayor shall submit a copy of the audit report with respect to each such audit so conducted to the Congress, the President of the United States, the Council of the District of Columbia, and the Comptroller General. (Sept. 4, 1976, Pub. L. 94-399, § 4, 90 Stat. 1208; Sept. 26, 1978, Pub. L. 95-386, § 3, 92 Stat. 750.)

Effect of Amendment.

1978 — Act Sept. 26, 1978, Pub. L. 95-386, 92 Stat. 750 amended section by changing “1979” to “1982” throughout section.

CHAPTER 2A.—BUDGET AND FINANCIAL MANAGEMENT—BORROWING—DEPOSIT OF FUNDS

Subchapter I.—Budget and Financial Management

§ 47-221. Submission of annual budget.

Section referred to in sections. 47-629.3, 47-3107.

§ 47-224. Adoption of budget by Council — Enactment of appropriations by Congress.

Section referred to in sections. 1-146, 1-182.

CHAPTER 3.—COLLECTION AND DISBURSEMENT OF TAXES

Sec.	Subchapter I. — General Provisions	Sec.	47-342. Right of District to sue in States — Authority of Mayor to secure services.
47-306.	Certificate of taxes and assessments due — Fee.	47-343.	Definitions.
47-306.1.	Authority of Mayor to adjust rates for issuance of certificates.		
	Subchapter III. Reciprocal Recovery of Taxes.		
47-341.	Right of States to sue in District — Certificate of secretary of state conclusive proof of authority.		

Subchapter I.—General Provisions

§ 47-306. Certificate of taxes and assessments due — Fee.

The collector of taxes shall furnish whenever called upon, a certified statement, over his hand and official seal, of all taxes and assessments, general and special, that may be due at the time of making said certificate; and said certificate when furnished shall be a bar to the collection and recovery from any subsequent purchaser of any tax or assessment omitted from and which may be a lien upon the real estate mentioned in said certificate, and said lien shall be discharged as to such subsequent purchaser, but shall not affect the liability of the person who owned the property at the time such tax was assessed to pay the same, mentioned in said certificate. The charge for each certificate of taxes so issued shall be six dollars. (Feb. 6, 1879, 20 Stat. 283, ch. 50; May 13, 1892, 27 Stat. 37, ch. 74; Mar. 3, 1917, 39 Stat. 1005, ch. 160; Mar. 3, 1925, 43 Stat. 1222, ch. 477; June 25, 1938, 52 Stat. 1202, ch. 702, § 11; Mar. 16, 1978, D.C. Law 2-57, § 2, 24 DCR 5426.)

Effect of Amendment.
1978 — Act March 16, 1978, D.C. Law 2-57, amended section by deleting the words “one dollar” in the second sentence and inserting in lieu thereof the words “six dollars.”

Legislative History of Law 2-57. Law 2-57 was introduced in Council and assigned Bill No. 2-201, which

was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on November 8, 1977 and November 22, 1977, respectively. Signed by the Mayor on December 15, 1977, it was assigned Act. No. 2-122 and transmitted to both Houses of Congress for its review.

§ 47-306.1. Authority of Mayor to adjust rates for issuance of certificates.

The Mayor of the District of Columbia is hereby authorized from time to time to adjust the rates to be charged for issuing certificates of real estate taxes and assessments due and for duplicating District of Columbia tax returns. Notice of changes in such rates shall be published in accordance with the provisions of the District of Columbia Administrative Procedure Act (D.C. Code, sec. 1-1501 et seq.) and, in addition, shall be filed with the Council of the District of Columbia at least thirty (30) days prior to their effective date. (Mar. 16, 1978, D.C. Law 2-57, § 5, 24 DCR 5426.)

Legislative History of Law 2-57. See note to § 47-306.

Subchapter III.—Reciprocal Recovery of Taxes

§ 47-341. Right of States to sue in District — Certificate of secretary of state conclusive proof of authority.

(a) Any State, acting through its lawfully authorized officials, shall have the right to sue in the Superior Court of the District of Columbia to recover any tax lawfully due and owing to it in any case in which such reciprocal right is accorded to the District of Columbia by such State, whether such right is granted by statutory authority or as a matter of comity.

(b) The certificate of the secretary of state, or of any other authorized official, of such State, or any subdivision thereof, to the effect that the official instituting a suit authorized under subsection (a) for collection of taxes in the Superior Court of the District of Columbia has the authority to institute such suit and collect such taxes shall be conclusive proof of such authority. (Sept. 27, 1978, Pub. L. 95-387, § 2, 92 Stat. 751.)

Short title. The first section of act Sept. 27, 1978, Pub. L. 95-387, 92 Stat. 751, provided "That this act may be cited as the 'District of Columbia Reciprocal Tax Collection Act.' "

Section referred to in section. 47-343.

§ 47-342. Right of District to sue in States — Authority of Mayor to secure services.

(a) In any State, or any subdivision thereof, in which the District of Columbia is authorized under the laws of such State to bring suit for the purpose of recovering taxes lawfully due and owing the District of Columbia, the Corporation Counsel is authorized to bring such suit in the name of the District of Columbia in the courts of such State, or any subdivision thereof.

(b) In connection with any such suit, the Mayor of the District of Columbia is authorized to secure professional and other services at such rates as may be usual and customary for such services in the jurisdiction involved. (Sept. 27, 1978, Pub. L. 95-387, § 3, 92 Stat. 751.)

Compiler's change. The word "counsel" in the third line of this section was spelled "council" in the original act.

Section referred to in section. 47-343.

§ 47-343. Definitions.

For purposes of this subchapter:

(1) The term "taxes" means—

(A) any tax assessment lawfully made, whether based upon a return or any other disclosure of the taxpayer or upon the information and belief of the taxing authority involved;

(B) any penalty lawfully imposed pursuant to any law, ordinance, or regulation which imposes a tax; or

(C) any interest charge lawfully added to the tax liability which constitutes the subject of any suit brought under sections 47-341 or 47-342.

(2) The term "State" means any of the several States, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Marianas, Guam, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States. (Sept. 27, 1978, Pub. L. 95-387, § 4, 92 Stat. 751.)

CHAPTER 6A.—REAL PROPERTY TAX

Sec.

Subchapter II.—Authority and Procedure to Establish
Real Property Tax Rates

47-645. Annual notice or statement of assessment —
Contents.

Subpart C.—Homeowner Exemption

Subpart B.—Assessment and Administration

47-650. [Repealed.]

Sec.

47-642. Separate valuation of land and improvements —
Appointment of assessors.

Subpart D.—Tax Incentives

47-651. [Repealed.]

Sec.	Subpart F.—Tax Deferral	Sec.	47-659.3. Mayor to gather and report information relating to single-family residential and residential cooperative properties.
47-655. Tax deferral — Homeowner whose adjusted gross income does not exceed \$20,000.		47-659.4. Council of the District of Columbia to review single-family residential and cooperative property tax exemptions annually.	
47-656. Same; homeowner whose adjusted gross income exceeds \$20,000.		47-659.5. Authorization to establish regulations.	
	Subpart H.—Residential Property Tax Relief	47-659.6. Effective date.	
47-659. Definitions.		47-659.7. Severability.	
47-659.1. Single-family residential and cooperative property tax exemption.			Subchapter III. Miscellaneous
47-659.2. Report to the Council of the District of Columbia on assessment changes for the highest-assessed properties.		47-662. Regulations to administer residential property tax relief.	

Subchapter II.—Authority and Procedure to Establish Real Property Tax Rates

Subpart A.—Real Property Tax Rate

§ 47-632. Council to establish tax rate — Public hearings.

Emergency Act Amendments. 1978 — For temporary amendment of section, see sec. 3 of the District of Columbia Renters and Homeowners Tax Reduction Emergency Act of 1978 (D.C. Act 2-265, Aug. 30, 1978, 25 DCR 2436); and sec. 3 of the Second District of Columbia Renters and Homeowners Tax	Reduction Emergency Act of 1978 (D.C. Act 2-305, Nov. 27, 1978, 25 DCR 5514).
	New implementing act. Pursuant to this section the “Real and Personal Tax Rate Act for Tax Year 1978” (D.C. Law 2-44, Feb. 28, 1978, 24 DCR 3637) was enacted.

§ 47-632a. Classification of real property.

Emergency Act Amendments. 1978 — For temporary amendment of section, see sec. 4 of the District of Columbia Renters and Homeowners Tax Reduction Emergency Act of 1978 (D.C. Act 2-265, Aug. 30, 1978, 25 DCR 2436); sec. 2 of the Tax	Amendments Emergency Act of 1978 (D.C. Act 2-293, Nov. 1, 1978, 25 DCR 5084); and sec. 4 of the Second District of Columbia Renters and Homeowners Tax Reduction Emergency Act of 1978 (D.C. Act 2-305, Nov. 27, 1978, 25 DCR 5514).
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§ 47-633. Mayor to recommend tax rate to Council.

Emergency Act Amendments. 1978 — For temporary amendment of section, see sec. 3 of the District of Columbia Renters and Homeowners Tax Reduction Emergency Act of 1978 (D.C. Act 2-265, Aug. 30, 1978, 25 DCR 2436); sec. 2 of the Tax	Amendments Emergency Act of 1978 (D.C. Act 2-293, Nov. 1, 1978, 25 DCR 5084); and sec. 3 of the Second District of Columbia Renters and Homeowners Tax Reduction Emergency Act of 1978. (D.C. Act 2-305, Nov. 27, 1978, 25 DCR 5514).
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Subpart B.—Assessment and Administration

§ 47-641. Assessment of real property — Regulations.

Section referred to in section. 47-659.1.

§ 47-642. Separate valuation of land and improvements — Appointment of assessors.

* * * * *

(d)(1) The Mayor may require an owner of real property to submit such information relating to the income or economic benefits derived from such property as in the Mayor’s judgment will assist in the determination of the estimated market value required under this title. If an owner of real property in the District of Columbia fails to submit such information within the time and in the form prescribed, there shall be added to the real property tax levied upon the property in question for the next ensuing tax year the amount of ten per centum (10%) of said tax:

Provided, that when such information is provided after said time and it is shown that the failure to provide it was due to reasonable cause and was not due to willful neglect, no such addition shall be made to the tax.

(2) All information submitted by a property owner to the Mayor regarding income or economic benefits derived from real property in the District of Columbia shall be accorded the same confidentiality as that applied to District of Columbia income tax returns under section 47-1564c and any violation of such confidentiality shall be punishable as provided in subsection (e) of said section 47-1564c. (As amended Feb. 28, 1978, D.C. Law 2-45, § 5, 24 DCR 3614.)

Effect of Amendment.
1978 — Act Feb. 28, 1978, D.C. Law 2-45, amended section by adding subsection (d).

Legislative History of Law 2-45. See note to § 47-659.
Cross-reference. For effective date of 1978 amendment, see § 47-659.6.

§ 47-645. Annual notice or statement of assessment — Contents.

Beginning as soon as possible after January 1, but no later than March 1 of each year, each taxpayer shall be notified of the assessment of his real property for the next fiscal year. The notice, or statement accompanying the notice, shall include—

* * * * *

(9) an explanation of all special benefits, incentives, limitations or credits which relate to real property taxes as a result of this or any other act. Included in said explanation shall be an easily understood description of the Property Tax Deferral Program, the Property Tax Credit, the Homestead Exemption and the Incentives for the Preservation of Historic Properties. Each description shall include, but not be limited to, application procedures and qualifying requirements. The title of each property tax relief program shall be capitalized, underlined and printed in bold type.
(As amended Oct. 13, 1978, D.C. Law 2-119, § 2, 25 DCR 1514.)

Effect of Amendment.
1978 — Act Oct. 13, 1978, D.C. Law 2-119, amended subsection (9) generally.
Emergency Act Amendment.
1978 — For temporary amendment of section, see sec. 2 of the Emergency Property Tax Deferral Reform Act of 1978 (D.C. Act 2-257, Aug. 10, 1978, 25 DCR 2219).
Legislative History of Law 2-119. Law 2-119 was introduced in Council and assigned Bill No. 2-324, which

was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on June 27, 1978 and July 11, 1978, respectively. Signed by the Mayor on August 1, 1978, it was assigned Act. No. 2-249 and transmitted to both Houses of Congress for its review.
Section referred to in section. 47-659.1.

NOTES TO DECISIONS

Cited in *Trustees of Nineteenth St. Baptist Church v. District of Columbia* (D.C. 1978, 385 A.2d 8).

§ 47-646. Board of Equalization and Review — Meetings — Appeals — Assessment revisions.

Emergency Act Amendments.
1978 — For temporary amendment of section, see sec. 3 of the District of Columbia Renters and Homeowners Tax Reduction Emergency Act of 1978 (D.C. Act 2-265,

Aug. 30, 1978, 25 DCR 2436); and sec. 3 of the Second District of Columbia Renters and Homeowners Tax Reduction Emergency Act of 1978 (D.C. Act 2-305, Nov. 27, 1978, 25 DCR 5514).

NOTES TO DECISIONS

Pre-appeal complaint held unnecessary in case involving exempt property. — Where property was exempt from taxation it could not subsequently be assessed absent compliance with the procedures prescribed by § 47-710 and a determination that the

property had for some sufficient reason become subject to taxation; and where such procedures were not followed no complaint to the Board was required pursuant to subsection (i). *Trustees of Nineteenth St. Baptist Church v. District of Columbia* (D.C. 1978, 385 A.2d 8).

Subpart C.—Homeowner Exemption

§ 47-650. **Repealed.** Feb. 28, 1978, D.C. Law 2-45, § 10, 24 DCR 3614.

Legislative History of Law 2-45. See note to § 47-659.

Subpart D.—Tax Incentives

§ 47-651. **Repealed.** July 13, 1978, D.C. Law 2-91, § 503, 24 DCR 9765.

Legislative History of Law 2-91. See note to § 47-3301.

Subpart F.—Tax Deferral

§ 47-655. **Tax deferral — Homeowner whose adjusted gross income does not exceed \$20,000.**

(a) An eligible taxpayer may defer each year any real property tax owed in excess of 110 per centum of his immediately preceding year’s real property tax liability. To be eligible for such deferral the taxpayer must—

(1) have owned for at least one (1) year the residential real property for which deferral is claimed;

(2) certify that the combined household adjusted gross income (for purposes of District income taxes) does not exceed \$20,000 in one year;

(3) file a written application for deferral on a form provided by the Mayor. An application for real property tax deferral may be filed with the Mayor any time prior to the last date an installment payment of the real property taxes which are to be deferred is due;

(4) certify that such residential real property is currently the principal place of residence of the taxpayer and that such residential real property was the principal place of residence for the taxpayer for the twelve (12) month period immediately preceding the application for deferral;

(5) certify that the zoning classification of such residential property has not changed in the immediately past fiscal year;

(6) certify that increases in the assessed valuation of such residential real property attributable to improvements which increase the intrinsic value of such residential real property are not included in the calculation of the increase in real property tax payable; and

(7) certify that the assessment of such residential real property for the immediately previous fiscal year was not the result of an obvious arithmetical error.

(b) If a taxpayer submits a timely application for deferral of real property taxes, the amount of real property tax owed in excess of 110 per centum of the prior year’s tax bill shall not constitute delinquent taxes nor shall the taxpayer be assessed any interest for the period said application is pending. A taxpayer shall be eligible to start deferring portions of the increased property tax liability immediately after his or her application has been approved by the Mayor. If the application for deferral is disapproved, the taxpayer shall be notified, in writing, of said disapproval and the reasons therefor and granted an additional thirty (30) days to pay said taxes without interest.

(c) Taxes deferred under this section shall bear interest compounded annually. The rate of interest which shall be applied in each year shall be the average Treasury bill rate for the preceding twelve months as certified by the Secretary of the Treasury to the Mayor.

(d) No further deferrals of real property tax shall be granted a taxpayer when the deferred tax plus interest equals more than 20 per centum of the current assessed value of the property for which the deferral is requested.

(e) Taxes deferred under this section, together with all accumulated interest, shall constitute a preferential lien upon the real property which shall be immediately payable by the seller, transferor, or conveyor whenever the real property is sold, refinanced, transferred, or conveyed in any manner, or whenever additional co-owners (other than spouse) are added to the real

property. (Sept. 3, 1974, Pub. L. 93-407, title IV, § 435, 88 Stat. 1058; Oct. 13, 1978, D.C. Law 2-119, § 3, 25 DCR 1514.)

Effect of Amendment.

1978 — Act Oct. 13, 1978, D.C. Law 2-119, amended section generally.

Emergency Act Amendment.

1978 — For temporary amendment of section, see sec. 3 of the Emergency Property Tax Deferral Reform Act of 1978 (D.C. Act 2-257, Aug. 10, 1978, 25 DCR 2219).

Legislative History of Law 2-119. See note to § 47-645.

Succession in government. The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-656. Same; homeowner whose adjusted gross income exceeds \$20,000.

* * * * *

(b) If a taxpayer submits a timely application for deferral of real property taxes, the amount of said taxes attributable to an increase by more than 25 per centum over the prior year's tax bill shall not constitute delinquent taxes nor shall the taxpayer be assessed any interest for the period said application is pending. A taxpayer shall be eligible to start deferring portions of the increased property tax liability immediately after his or her application has been approved by the Mayor. If the application for deferral is disapproved, the taxpayer shall be notified, in writing, of said disapproval and the reasons therefor and granted an additional thirty (30) days to pay said taxes without interest.

(c) Taxes deferred under this section shall bear interest compounded annually. Notwithstanding any other provision of law, the rate of interest which shall be applied in each year is the average Treasury bill rate for the preceding twelve months as certified by the Secretary of the Treasury to the Mayor.

(d) No further deferrals of real property tax shall be granted a taxpayer when the deferred tax plus interest equals more than 20 per centum of the current assessed value of the property for which the deferral is requested.

(e) Taxes deferred under this section, together with all accumulated interest, shall constitute a preferential lien upon the property which shall be immediately payable by the seller, transferor, or conveyor whenever the property is sold, refinanced, transferred, or conveyed in any manner, or whenever additional co-owners (other than spouse) are added to the property. (As amended Oct. 13, 1978, D.C. Law 2-119, § 4, 25 DCR 1514.)

Effect of Amendment.

1978 — Act Oct. 13, 1978, D.C. Law 2-119, amended section by redesignating subsection (b), (c), (d) and (e) as (c), (d), (e) and (f) and added new subsection (b), by amending redesignated subsection (d) and by deleting redesignated subsection (f).

Emergency Act Amendment.

1978 — For temporary amendment of section, see sec. 4 of the Emergency Property Tax Deferral Reform Act of 1978 (D.C. Act 2-257, Aug. 10, 1978, 25 DCR 2219).

Legislative History of Law 2-119. See note to § 47-645.

Succession in government. The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Subpart H.—Residential Property Tax Relief

§ 47-659. Definitions.

For the purposes of this subpart:

(1) The term "single-family residential property" means real property improved by a dwelling which is used exclusively for non-transient residential purposes and which contains not more than one (1) dwelling unit, whether as a row, detached, or semi-detached structure, or as a single condominium unit in a declared property regime.

(2) The term "cooperative housing association" means an association, whether incorporated or unincorporated, organized for the purpose of owning and operating residential real property

in the District of Columbia, the shareholders or members of which, by reason of their ownership of a stock or membership certificate, a proprietary lease or other evidence of membership, are entitled to occupy a dwelling unit pursuant to the terms of a proprietary lease or occupancy agreement.
(Feb. 28, 1978, D.C. Law 2-45, § 2, 24 DCR 3614.)

Emergency Act Amendments.
1978 — For temporary amendment of section, see sec. 7 of the District of Columbia Renters and Homeowners Tax Reduction Emergency Act of 1978 (D.C. Act 2-265, Aug. 30, 1978, 25 DCR 2436); and sec. 7 of the Second District of Columbia Renters and Homeowners Tax Reduction Emergency Act of 1978 (D.C. Act 2-305, Nov. 27, 1978, 25 DCR 5514).

Legislative History of Law 2-45. Law 2-45 was introduced in Council and assigned Bill No. 2-127, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first, amended first, and second readings on June 28, 1977, July 26, 1977 and September 13, 1977, respectively. Signed by the Mayor on November 2, 1977, it was assigned Act No. 2-96 and transmitted to both Houses of Congress for its review.

§ 47-659.1. Single-family residential and cooperative property tax exemption.

(a) For the purpose of computing taxes on real property in the District of Columbia for the tax year beginning July 1, 1977 and ending June 30, 1978, notwithstanding the provisions of section 47-641, there shall be deducted from the estimated market value of a single-family residential property the amount of six thousand dollars (\$6,000): Provided, however, that such deduction shall not exceed the estimated market value of that property.

(b) For the purpose of computing taxes on real property in the District of Columbia for the tax year beginning July 1, 1978 and for each tax year thereafter, notwithstanding the provisions of section 47-641, there shall be deducted from the estimated market value of a single-family residential property which is the principal place of residence of its owner and from the estimated market value of a residential property with five (5) or fewer dwelling units which includes the principal place of residence of its owner the amount of six thousand dollars (\$6,000): Provided, however, that such deduction shall not exceed the estimated market value of the property. To determine the owner's principal place of residence, the Mayor shall devise a form for an affidavit and mail it to the owner along with the notice of assessment required under section 47-645. In order to obtain the deduction provided under this subsection (b), the owner shall complete the affidavit and return it to the Mayor within sixty (60) days of the date such affidavit form was mailed to the owner. The Mayor may verify the contents of the affidavit. The Mayor may grant a reasonable extension of time, not to exceed sixty (60) days, for filing the affidavit whenever in his or her judgment good cause exists therefor.

(c) (1) For the purpose of computing taxes on real property in the District of Columbia for the tax year commencing July 1, 1977 and for each tax year thereafter, the Mayor shall deduct from the estimated market value of residential real property owned by a cooperative housing association and occupied by the members of such association the amount of twelve percent (12%) of the estimated market value of said property: Provided, however, that the deduction may not exceed the amount of six thousand dollars (\$6,000) multiplied by the number of dwelling units which are the principal place of residence of members of such association.

(2) In order to obtain the deduction provided under this subsection (c) and to determine the principal place of residence of members of cooperative housing associations, each member shall, at such times and in such manner as the Mayor shall prescribe, complete and return the form of affidavit provided for under subsection (b) of this section. The Mayor may require the officers or managers of each cooperative housing association to distribute the affidavit forms to its members and to collect the completed affidavits from such members for return to the Mayor. Such officers or managers shall supply such other information as the Mayor may require.

(3) Notwithstanding the provisions of subsection (c) (1) of this section, for the tax year commencing July 1, 1977 only, tax bills relating to residential real property owned by cooperative housing associations shall not reflect the deduction from estimated market value provided for in said subsection (c) (1). Such tax bills shall be paid in the full amount shown thereon at the times provided for in said subsection (c) (1). The amount of the deduction shall be determined by the Mayor at the earliest practicable time after receipt of the required affidavits and shall

be refunded to the owners of such property, such refunds to be made from current real property tax revenues.

(d) In relation to property tax bills required to be paid on September 15, 1977 and on March 31, 1978 by owners of property eligible for the exemption provided in subsection (a) of this section:

(1) The Mayor shall indicate on each tax bill, to the extent feasible, the fact and amount of the exemption and shall enclose with such tax bills a notice which includes at least the following information:

(A) the amount of the deduction;

(B) the name of this subpart and the date on which it was enacted by the Council of the District of Columbia; and

(C) the exact amount by which the deduction has reduced the property owner's tax bill.

(2) Any mortgage lender, including but not limited to a savings and loan association, a commercial bank, and a mortgage banker which receives such a property tax bill and pays it on behalf of the owner of the property in question shall forward to said property owner not later than four (4) months after the date on which the property tax payment is due:

(A) a copy of said property tax bill; and

(B) a copy of the notice required by subsection (d) (1) of this section.

(e) In relation to property tax bills required to be paid after March 31, 1978 the information specified in paragraphs (d) (1) (A) and (d) (1) (C) of this section shall be included on the face of each tax bill. Nothing in this subsection shall diminish the duty of the Mayor to include an explanation of the exemption provided in subsection (a) of this section on a notice of assessment, as required by section 47-645(9). (Feb. 28, 1978, D.C. Law 2-45, § 3, 24 DCR 3614.)

Emergency Act Amendments.

1978 — For temporary amendment of section, see sec. 7 of the District of Columbia Renters and Homeowners Tax Reduction Emergency Act of 1978 (D.C. Act 2-265, Aug. 30, 1978, 25 DCR 2436); and sec. 7 of the Second

District of Columbia Renters and Homeowners Tax Reduction Emergency Act of 1978 (D.C. Act 2-305, Nov. 27, 1978, 25 DCR 5514).

Legislative History of Law 2-45. See note to § 47-659. Section referred to in sections. 47-659.3, 47-659.4.

§ 47-659.2. Report to the Council of the District of Columbia on assessment changes for the highest-assessed properties.

Not later than April 1st of each year, the Mayor shall submit a report to the Council of the District of Columbia with the following information:

(1) the assessment changes, if any, made on the thirty (30) taxable commercial and multi-family residential properties which had the highest assessments in the District of Columbia for the previous property tax year;

(2) an explanation for each such assessment change reported under subsection (1) of this section; and

(3) the changes in the assessment of each of the thirty (30) properties referred to in subsection (1) of this section over the previous four (4) property tax years. (Feb. 28, 1978, D.C. Law 2-45, § 6, 24 DCR 3614.)

Emergency Act Amendments.

1978 — For temporary amendment of section, see sec. 7 of the District of Columbia Renters and Homeowners Tax Reduction Emergency Act of 1978 (D.C. Act 2-265, Aug. 30, 1978, 25 DCR 2436); and sec. 7 of the Second District of Columbia Renters and Homeowners Tax

Reduction Emergency Act of 1978 (D.C. Act 2-305, Nov. 27, 1978, 25 DCR 5514).

Legislative History of Law 2-45. See note to § 47-659.

Compiler's changes. The reference to subsection (1) in subsections (2) and (3) referred to subsection (a) in the original act.

§ 47-659.3. Mayor to gather and report information relating to single-family residential and residential cooperative properties.

(a) On or before the date the Mayor transmits to the Council of the District of Columbia a recommended property tax rate for the property tax year beginning on July 1, 1978, the Mayor shall report the following information to the Council of the District of Columbia:

(1) the number of units in each residential real property owned by a cooperative housing association in the District of Columbia and occupied by the members of said association;

(2) the estimated market value of each said residential property for the two (2) most recent assessments; and

(3) a recommendation for a real property tax assessment exemption that would be applied to each individual unit in said property.

(b) The Mayor shall report to the Council of the District of Columbia each year on or before the date the Mayor submits a budget to this Council, as required under section 47-221, the number of properties the Mayor expects to be benefited by the deductions provided in section 47-659.1, according to the type of property, for the fiscal year to which said budget applies and the amount of revenue which the District of Columbia will forego because of said deductions. (Feb. 28, 1978, D.C. Law 2-45, § 7, 24 DCR 3614.)

Legislative History of Law 2-45. See note to § 47-659.

§ 47-659.4. Council of the District of Columbia to review single-family residential and cooperative property tax exemptions annually.

The Council of the District of Columbia shall review by July 1st of each year the residential and cooperative property tax relief provided under section 47-659.1 and shall adjust the relief whenever in its view such adjustment is necessary to reduce excessive residential and cooperative property tax burdens and to maintain equity among and between the owners of different classes of real property. (Feb. 28, 1978, D.C. Law 2-45, § 8, 24 DCR 3614.)

Legislative History of Law 2-45. See note to § 47-659.

§ 47-659.5. Authorization to establish regulations.

The Mayor is authorized to develop the necessary forms and procedures and to establish regulations necessary to carry out the provisions of this subpart. (Feb. 28, 1978, D.C. Law 2-45, § 9, 24 DCR 3614.)

Legislative History of Law 2-45. See note to § 47-659.

§ 47-659.6. Effective date.

(a) This subpart shall apply to the property tax year beginning on July 1, 1977 and to each property tax year thereafter.

(b) This subpart shall take effect as provided for acts of the Council of the District of Columbia in section 1-147 (c) (1). (Feb. 28, 1978, D.C. Law 2-45, § 12, 24 DCR 3614.)

Legislative History of Law 2-45. See note to § 47-659.

§ 47-659.7. Severability.

The provisions of this subpart are severable, and if any provision, sentence, clause, section or part is held illegal, invalid, unconstitutional or inapplicable to any person or circumstances, such holding shall not affect or impair any of the remaining provisions, sentences, clauses, sections or parts of the subpart or their application to other persons or circumstances. (Feb. 28, 1978, D.C. Law 2-45, § 11, 24 DCR 3614.)

Legislative History of Law 2-45. See note to § 47-659.

Subchapter III.—Miscellaneous

§ 47-662. Regulations to administer residential property tax relief.

The Mayor may promulgate rules and regulations for the proper administration of the provisions of sections 47-655 and 47-656. (Oct. 13, 1978, D.C. Law 2-119, § 5, 25 DCR 1514.)

Legislative History of Law 2-119. See note to § 47-645.

CHAPTER 7.—ASSESSMENT OF REAL PROPERTY

§ 47-710. Real property and improvements becoming subject to taxation to be listed annually.

NOTES TO DECISIONS

Application of section is not limited to new structures or improvements to old structures. *Trustees of Nineteenth St. Baptist Church v. District of Columbia* (D.C. 1978, 385 A.2d 8).

Pre-appeal complaint held unnecessary in case involving exempt property. — Where property was exempt from taxation it could not subsequently be assessed absent compliance with the procedures

prescribed by this section and a determination that the property had for some sufficient reason become subject to taxation; and where such procedures were not followed no complaint to the Board of Equalization and Review was required pursuant to § 47-646 (i). *Trustees of Nineteenth St. Baptist Church v. District of Columbia* (D.C. 1978, 385 A.2d 8).

CHAPTER 8.—EXEMPTIONS FROM TAXATION

Sec.	Sec.
47-801a. Government property — Property of educational, charitable, religious or scientific institutions — Profits arising from sale of property.	47-801c. Report as to use of exempt property. 47-801f. Rules and regulations.

§ 47-801a. Government property — Property of educational, charitable, religious or scientific institutions — Profits arising from sale of property.

The real property exempt from taxation in the District of Columbia shall be the following and none other:

* * * * *

(h) Buildings belonging to and operated by institutions which are not organized or operated for private gain, which are used for purposes of public charity principally in the District of Columbia.

* * * * *

- (t) Multi-family rental and cooperative housing for low and moderate income persons who are receiving assistance through one or more of the following federal programs:
- (1) interest reduction payments made under section 236 of the National Housing Act (12 U.S.C. § 1715z-1);
 - (2) payments made for new construction and substantial rehabilitation under section 8 of the United States Housing Act of 1937 (42 U.S.C. § 1437f);
 - (3) payments made under section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. § 1701s);
 - (4) mortgage insurance under section 221 (d) (3), BMIR, of the National Housing Act, (12 U.S.C. § 1715l (d) (3)); and
 - (5) direct loans made under section 202 of the Housing Act of 1959 (12 U.S.C. § 1701q):
- Provided however, that the owner(s) of such exempt property shall submit by March 1 of each year an annual income and expense statement to the District of Columbia Department of Finance

and Revenue and shall make a yearly payment in lieu of taxes in an amount calculated in the following manner:

(A) if the owner(s) is not organized for profit, no payment shall be required; and

(B) if the owner(s) is organized as a limited dividend or limited profit owner, or a profit owner, a payment for such building, in an amount equal to five (5) percent of the gross income derived from the operation of such building during the latest completed annual accounting period, shall be required.

If the owner(s) of exempt property fail to make the in lieu of taxes payment in a manner which the Department of Finance and Revenue shall prescribe, such property shall be subject to the provisions of section 47-1001 et seq.

This subsection shall not apply to those properties granted an exemption before January 5, 1971, under subsection (h) of this section.

(As amended Oct. 4, 1978, D.C. Law 2-116, § 2, 25 DCR 1735.)

Effect of Amendment.

1978 — Act Oct. 4, 1978, D.C. Law 2-116, amended section by deleting the second sentence of subsection (h) and adding subsection (t).

Legislative History of Law 2-116. Law 2-116 was introduced in Council and assigned Bill No. 2-285, which was referred to the Committee on Housing and Urban

Development and to the Committee on Finance and Revenue for comments. The Bill was adopted on first, amended first, and second readings on June 13, 1978, June 27, 1978 and July 11, 1978, respectively. Signed by the Mayor on July 26, 1978, it was assigned Act No. 2-243 and transmitted to both Houses of Congress for its review.

Section referred to in sections. 47-801c, 47-801f.

§ 47-801b. Income producing property of exempt institutions.

Section referred to in section. 47-801f.

§ 47-801c. Report as to use of exempt property.

Every institution, organization, corporation, or association owning property exempt under the provisions of paragraphs (d) to (t), inclusive, of section 47-801a shall, on or before March 1, 1943, and on or before March 1 of each succeeding year, furnish the Mayor of the District of Columbia a report, under oath, showing the purposes for which its exempt property has been used during the preceding calendar year: Provided however, that the requirement for a report shall be satisfied by submitting an application for exemption from tax, and an income and expense statement pursuant to section 47-801a(t). Upon written application by the institution, organization, corporation, or association filed before March 1 of any year, the Mayor may extend the time for filing said report for a reasonable period. A copy of such report shall be forwarded to the Congress by the Mayor.

If such report is not filed within the time provided herein, or as extended by the Mayor, the property of the institution, organization, corporation, or association affected shall immediately be assessed and taxed until the required report is filed: Provided, however, that such tax shall be for a minimum period of thirty days. (Dec. 24, 1942, 56 Stat. 1091, ch. 826, § 3; Oct. 4, 1978, D.C. Law 2-116, § 2, 25 DCR 1735.)

Effect of Amendment.

1978 — Act Oct. 4, 1978, D.C. Law 2-116, amended section by deleting “(q)” and inserting “(t)” in lieu thereof and by inserting the proviso at the end of the first sentence.

Legislative History of Law 2-116. See note to § 47-801a.

Succession in government. The District of Columbia Council and the office of Commissioner of the District of

Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Section referred to in section. 47-801f.

§ 47-801f. Rules and regulations.

The Mayor of the District of Columbia is authorized to make and promulgate such rules and regulations as he may deem necessary to carry out the intent and purposes of sections 47-801a, 47-801b and 47-801c to 47-801f: Provided, that such rules and regulations shall include provision

for mailing annually, on or before February 1 of each year, to each of the institutions, organizations, corporations, or associations required by section 47-801c to file annual reports, notice of its contingent tax liability under sections 47-801a, 47-801b and 47-801c to 47-801f, together with a copy of any standard form for such reports which shall have been prescribed by the Mayor of the District of Columbia under authority of this section. (Dec. 24, 1942, 56 Stat. 1091, ch. 826, § 6; Sept. 29, 1943, 57 Stat. 568, ch. 248; Oct. 4, 1978, D.C. Law 2-116, § 2, 25 DCR 1735.)

Effect of amendment.

1978 — Act Oct. 4, 1978, D.C. Law 2-116, amended section by deleting everything in the first sentence before the word "Provided" and inserting in lieu thereof "The Mayor of the District of Columbia is authorized to make and promulgate such rules and regulations as he may

deem necessary to carry out the intent and purposes of sections 47-801a, 47-801b and 47-801c to 47-801f." and by deleting the word "Commissioner" in the proviso clause and inserting in lieu thereof the word "Mayor."

Legislative History of Law 2-116. See note to § 47-801a.

CHAPTER 10.—REAL PROPERTY TAX SALES

§ 47-1001. Delinquent tax list — Publication of notice — Competitive proposals — Sale.

Section referred to in section. 47-801a.

NOTES TO DECISIONS

Notice provisions require strict compliance, and where a notice which appeared on September 19 and 20, 1972, announced that a delinquent tax list had been published on September 23, 1972, that notice of a

publication which had not yet taken place was not sufficient and was therefore fatally defective. *Shenandoah Corp. v. Pringle* (D.C. 1978, 385 A.2d 748).

§ 47-1002. Sale of property — Purchase by District.

NOTES TO DECISIONS

Cited in *Shenandoah Corp. v. Pringle* (D.C. 1978, 385 A.2d 748).

§ 47-1003. Deposit required — Certificate of sale — Tax deed — Redemption.

NOTES TO DECISIONS

Penalties on delinquent taxes have same status as the principal debt. *District of Columbia Redevelopment Land Agency v. Eleven Parcels of Land in Squares* (1978, 589 F.2d 628).

Government priority in proceeds from tax sale. — Where private and public claims compete for the proceeds

from a condemnation or tax sale, payment to the government takes priority over satisfaction of private interests. *District of Columbia Redevelopment Land Agency v. Eleven Parcels of Land in Squares* (1978, 589 F.2d 628).

§ 47-1006. Report of tax sale to be filed with recorder of deeds — Disposition of surplus on redemption.

NOTES TO DECISIONS

Cited in *District of Columbia Redevelopment Land Agency v. Eleven Parcels of Land in Squares* (1978, 589 F.2d 628).

§ 47-1011. Liens on real estate for unpaid taxes — Enforcement — Redemption before sale.**NOTES TO DECISIONS**

Cited in District of Columbia Redevelopment Land Agency v. Eleven Parcels of Land in Squares (1978, 589 F.2d 628).

CHAPTER 11.—SPECIAL ASSESSMENTS**§ 47-1105. Assessment for removal of nuisance — Sale for nonpayment.**

(As amended Mar. 16, 1978, D.C. Law 2-52, § 2, 24 DCR 4832.)

Effect of amendment.

1978 — Act March 16, 1978, D.C. Law 2-52, reenacted the first sentence of the section without change.

Legislative History of Law 2-52. Law 2-52 was introduced in Council and assigned Bill No. 2-185, which was referred to the Committee on Finance and Revenue

and to the Committee on Housing and Urban Development for comments. The Bill was adopted on first and second readings on October 11, 1977 and October 25, 1977, respectively. Signed by the Mayor on December 7, 1977, it was assigned Act No. 2-113 and transmitted to both Houses of Congress for its review.

CHAPTER 12.—TAXATION OF PERSONAL PROPERTY

Sec.

47-1209. Payment of taxes — Late payment penalty —
Mandamus to compel filing sworn return
— Expenses.

§ 47-1207. Rate of taxation — Exceptions.

New implementing act. Pursuant to this section the “Personal Property Tax Rate Act for Tax Year 1979.” (D.C. Law 2-88, June 30, 1978, 24 DCR 9755) was enacted.

§ 47-1209. Payment of taxes — Late payment penalty — Mandamus to compel filing sworn return — Expenses.

Real estate taxes are due and payable in full on or before September 15 annually except that where the real estate tax is less than \$100,000, such tax shall be due and payable semiannually in two equal installments, the first installment to be paid on or before September 15, and the second installment to be paid on or before March 31. Except that the real estate taxes for cooperative housing associations with tax liabilities of \$100,000 or more, shall be payable in two installments, the first installment to be paid on or before September 15, and the second installment to be paid on or before March 31. For the purposes of this section, the term “cooperative housing association” means an association, whether incorporated or unincorporated, organized for the purpose of owning and operating residential real property, the shareholders or members of which, by reason of their ownership of a stock or membership certificate, a proprietary lease or other evidence of membership, are entitled to occupy a single dwelling unit pursuant to the terms of a proprietary lease or occupancy agreement. Personal taxes of all kinds are due and payable in full at the time prescribed for the filing of the tax return. If any such tax, or any installment thereof, is not paid within the time prescribed, there shall be added to such tax or installment a penalty of 10% of the unpaid amount plus interest on such unpaid amount at the rate of 1% per month or portion of a month until the tax or installment is paid. The amount of unpaid tax, or installment thereof, plus the penalty or interest due, shall constitute a delinquent tax to be collected in the manner prescribed by law.

If any person neglects or refuses to file a return of personal property as required by law, and the assessor certifies to the Mayor of the District of Columbia that, in his opinion, the best

information obtainable does not afford a satisfactory basis for assessment, the Mayor may, by petition to the Superior Court of the District of Columbia for mandamus against such person, compel the filing of a sworn return, and in such case the court shall require the person at fault to pay all expenses of the proceeding. (July 3, 1926, 44 Stat. 833, ch. 759, § 5; Feb. 18, 1929, 45 Stat. 1227, ch. 259, § 5; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; May 18, 1954, 68 Stat. 112, ch. 218, § 606; July 29, 1970, Pub. L. 91-358, title I, § 155(c)(48), 84 Stat. 573; June 15, 1976, D.C. Law 1-70, title III, § 301, 23 DCR 537; Apr. 19, 1977, D.C. Law 1-124, title III, § 301(a), 23 DCR 8749; Apr. 18, 1978, D.C. Law 2-73, § 2, 24 DCR 7066.)

Effect of Amendment.

1978 — Act April 18, 1978, D.C. Law 2-73, amended section by inserting the second and third sentences of the first paragraph.

Legislative History of Law 2-73. See note to § 25-103.

CHAPTER 15.—INCOME AND FRANCHISE TAXES

Subchapter II. — Income and Franchise Taxes
for Taxable Years January 1, 1947
Title V. — Returns

Sec. Title VII. — Tax on Corporations
47-1571a. Imposition and rate of tax.

Sec.
47-1564c. Divulging of information.
47-1567g. Credit for property taxes accrued and payable
by District of Columbia residents.

Title VIII. — Tax on Unincorporated Businesses
47-1574b. Imposition and rate of tax.

Subchapter II. — Income and Franchise Taxes for Taxable Years after January 1, 1947

Title I.—Repeal of Prior Income Tax Law and Applicability of Subchapter; General Definitions

§ 47-1551. Repeal of subchapter I and retention of certain provisions thereof.

Section referred to in section. 45-1699.4.

Title II.—Exempt Organizations

§ 47-1554. Exempt organizations.

Section referred to in section. 1-1173.

Title III.—Net Income, Gross Income and Exclusions Therefrom, and Deductions

§ 47-1557a. Gross income and exclusions therefrom.

Effective date of 1977 amendment. Section 2 of act Apr. 18, 1978, D.C. Law 2-73, 24 DCR 7066, provided that subsection b of section 1101 of act Apr. 19, 1977, D.C. Law 1-124, 23 DCR 8749 (set out as footnote to section 47-1557a in Supplement V) be amended as follows:

“b. That portion of section 301 relating to the single payment date for real estate taxes in the amount of

\$100,000 or more shall apply with respect to taxes becoming due and payable after June 30, 1979. The remaining portions of section 301, including the provisions relating to the payment of personal taxes of all kinds and of real estate taxes by cooperative housing associations, shall apply with respect to taxes, or installments thereof, becoming due and payable after June 30, 1978.”

Title V.—Returns

§ 47-1564. Form of returns and duty to file — Certificates of nonresidence.

Section referred to in sections. 47-1564c, 47-3309.

§ 47-1564c. Divulging of information.

(a) *Secrecy of returns.* — Except to any official of the District, having a right thereto in his official capacity, it shall be unlawful for any officer or employee of the District to divulge or make known in any manner the amount of income or any particulars relating thereto or the computation thereof set forth or disclosed in any return required to be filed under section 47-1564, and neither the original nor a copy of any such return desired for use in litigation in court shall be furnished where neither the District nor the United States is interested in the result of such litigation, whether or not the request is contained in an order of the court: Provided, however, that nothing herein contained shall be construed to prevent the furnishing to a taxpayer of a copy of his return upon the payment of a fee of \$3.50.

* * * * *

(As amended Mar. 16, 1978, D.C. Law 2-57, § 3, 24 DCR 5426.)

Effect of Amendment.
1978—Act March 16, 1978, D.C. Law 2-57, amended section by deleting the figure “2.” in the last sentence of subsection (a) and inserting in lieu thereof the figure “3.50.”

Emergency Act Amendments.
1978—For temporary amendment of section, see sec. 2

of the Tax Return Confidentiality Emergency Act of 1978 (D.C. Act 2-288, Oct. 25, 1978, 25 DCR 4322); and sec. 2 of the Tax Return Confidentiality Second Emergency Act of 1978 (D.C. Act 2-332, Dec. 29, 1978, 25 DCR 7017).

Legislative History of Law 2-57. See note to § 47-306.

§ 47-1567g. Credit for property taxes accrued and payable by District of Columbia residents.

(a) (1) For purposes of providing relief to certain District of Columbia residents who own or rent their principal place of abode and who reside in same, a credit shall be allowed to the eligible claimant equal to the amount by which all or a portion of real property taxes the taxpayer pays, or rent paid constituting property taxes, on his principal place of residence for the taxable year, exceeds a percentage (determined under subsection (a)(2)) of his household gross income for that year.

(2) (A) Effective for taxable years beginning after December 31, 1974 and ending before January 1, 1978 the percentage required under paragraph (1) of this subsection to be determined for claimants other than elderly, blind, or disabled claimants shall be the percentage specified in the following table: Provided, further, that the credit shall not exceed three hundred and twenty dollars (\$320) and: Provided, however, that for tax years beginning on and after January 1, 1977 the percentage required under paragraph (1) of this subsection for elderly, blind, or disabled claimants shall be the percentage specified in paragraph (2) (C) of this subsection.

Non-Elderly Circuit Breaker	
After December 31, 1974 and Prior to January 1, 1978	
If household gross income is:	The percentage of the first \$400 of real property tax paid or the rent constituting the real property tax which shall constitute the credit is:
Under \$3,000	80 per centum of the tax in excess of 2 per centum of gross income.
\$3,000 to \$4,999	70 per centum of the tax in excess of 3 per centum of gross income.
\$5,000 to \$6,999	60 per centum of the tax in excess of 4 per centum of gross income.

(B) Effective for tax years beginning after December 31, 1977, the percentage required under paragraph (1) of this subsection (a) to be determined for claimants other than elderly, blind, or disabled claimants shall be the percentage specified in the following table: Provided, however, that the credit shall not exceed four hundred dollars (\$400):

Non-Elderly Circuit Breaker
After December 31, 1977

If household gross income is:	The percentage of the real property tax paid or rent constituting the real property tax which shall constitute the credit is:
Under \$3,000	95 per centum of the tax in excess of 2 per centum of gross income.
\$3,000 to \$4,999	90 per centum of the tax in excess of 3 per centum of gross income.
\$5,000 to \$6,999	85 per centum of the tax in excess of 4 per centum of gross income.
\$7,000 to \$10,000	80 per centum of the tax in excess of 4 per centum of gross income.

(C) For tax years beginning on and after January 1, 1977 the percentage required under paragraph (1) of this subsection (a) to be determined for elderly, blind, or disabled claimants shall be the percentage specified in the following table: Provided, however, that the credit shall not exceed seven hundred and fifty dollars (\$750):

Elderly, Blind, or Disabled Circuit Breaker

If household gross income is:	The credit shall equal the amount of property taxes paid or rent constituting the property taxes which is in excess of the following percentage of household gross income:
Under \$4,999	1.0%
\$5,000 to \$9,999	1.5%
\$10,000 to \$14,999	2.0%
\$15,000 to \$20,000	2.5%

* * * * *

(b) For purposes of this section:

* * * * *

- (5) The term “elderly claimant” means a claimant who is sixty-two (62) years of age or older during any tax year or part thereof beginning after December 31, 1976 and who, together with his or her spouse, if any, provides fifty percent (50%) or more of the household gross income of the household of which he or she is a part.
- (6) The term “blind claimant” means a claimant whose central visual acuity does not exceed 20/200 in the better eye with correcting lenses or whose visual acuity is greater than 20/200 but is accompanied by a limitation in the field of vision such that the widest diameter of the visual field subtends an angle no greater than twenty (20) degrees.

(7) The term “disabled claimant” means a claimant unable to engage in any substantial gainful activity by reason of a medically determinable physical or mental impairment which can be expected to result in death or has lasted or can be expected to last for a continuous period of not less than twelve (12) months. Disabled persons filing claims under this section shall submit proof of disability in such form and manner as the Mayor shall by rule and regulation prescribe. Proof that a claimant is eligible to receive disability benefits under the federal Social Security Act shall constitute proof of disability for the purposes of this section. A disabled person not covered under the federal Social Security Act shall be examined by a physician designated by the Mayor and the person’s status as a disabled claimant shall be determined using the same standards as those set by the United States Social Security Administration. The cost of this examination shall be borne by the claimant.

(8) (A) The term “rent paid” is that amount paid by or on behalf of a claimant to a landlord solely for the right of occupancy of a home in the District, including the right to use the personal property located therein. Utility charges may be included in the amount of rent paid if they are included in the amount paid to a landlord in connection with the right to occupancy. “Rent paid” does not include: advance rental payments for another period; rental deposits, whether or not expressly set out in the rental agreement; any charges for medical services or food provided by the landlord; or payments made to a landlord for the right of occupancy of property which is exempt from District real property taxes.

(B) The term “rent constituting property taxes accrued” means 15 per centum of the rent paid in any calendar year by a claimant solely for the right of occupancy of his home in the calendar year, and which constitutes the basis of a claim in the succeeding calendar year for a credit for property taxes paid.

* * * * *

(As amended Feb. 28, 1978, D.C. Law 2-45, § 4, 24 DCR 3614.)

Effect of Amendment.
1978—Act Feb. 28, 1978, D.C. Law 2-45, amended section by amending paragraph (2) of subsection (a) generally and by redesignating paragraph (5) of subsection (b) as paragraph (8) and adding new paragraphs (5), (6) and (7) to subsection (b).

Emergency Act Amendments.
1978—For temporary amendment of section, see sec. 6 of the District of Columbia Renters and Homeowners Tax Reduction Emergency Act of 1978 (D.C. Act 2-265, Aug.

30, 1978, 25 DCR 2436); sec. 2 of the Tax Amendments Emergency Act of 1978 (D.C. Act 2-293, Nov. 1, 1978, 25 DCR 5084); and sec. 6 of the Second District of Columbia Renters and Homeowners Tax Reduction Emergency Act of 1978 (D.C. Act 2-305, Nov. 27, 1978, 25 DCR 5514).

Legislative History of Law 2-45. See note to § 47-659.

Cross-reference. For effective date of 1978 amendment, see § 47-659.6.

Section referred to in section. 45-1698.

Title VII.—Tax on Corporations

§ 47-1571a. Imposition and rate of tax.

For the privilege of carrying on or engaging in any trade or business within the District and of receiving income from sources within the District, there is hereby levied (a) for one taxable year beginning on or after January 1, 1975, a tax at the rate of twelve per centum (12%) upon the taxable income of every corporation, whether domestic or foreign, (except those expressly exempt under title II of this subchapter); (b) for the taxable years beginning on or after January 1, 1976, a tax at the rate of nine per centum (9%) upon the taxable income of every corporation, whether domestic or foreign (except those expressly exempt under title II of this subchapter); and (c) for the taxable years beginning on or after January 1, 1976, a surtax at the rate of ten per centum (10%) of the tax determined under clause (b) hereof. The minimum tax payable under this section shall be twenty-five dollars (\$25.00). (July 16, 1947, 61 Stat. 345, ch. 258, Art. I, title VII, § 2; Aug. 2, 1968, Pub. L. 90-450, title II, § 202(a), 82 Stat. 612; Oct. 31, 1969, Pub. L. 91-106, title VI, § 604(a)(1), 83 Stat. 178; Dec. 15, 1971, Pub. L. 92-196, title IV, §§ 401, 403, 85 Stat. 653, 654; Oct. 21, 1975, D.C. Law 1-23, title VI, § 603, 22 DCR 2111; July 27, 1976, D.C. Law 1-77, § 2, 23 DCR 1218; Mar. 16, 1978, D.C. Law 2-58, § 201, 24 DCR 5765.)

Effect of Amendment.

1978—Act March 16, 1978, D.C. Law 2-58, amended section generally.

Legislative History of Law 2-58. See note to § 47-3101.

NOTES TO DECISIONS

Company could not claim federal exemption. — Court did not have to decide whether 15 U.S.C. §§ 381-384, prohibiting states from taxing certain income derived from interstate commerce, applied to the District of Columbia since the sales representatives of the company taxed under

this section had established permanent offices within the District, thereby putting the company's activities outside the protection of the federal statute. *Jantzen, Inc. v. District of Columbia* (D.C. 1978, 395 A.2d 29).

Title VIII.—Tax on Unincorporated Businesses**§ 47-1574b. Imposition and rate of tax.**

For the privilege of carrying on or engaging in any trade or business within the District and of receiving income from sources within the District, there is hereby levied (a) for one taxable year beginning on or after January 1, 1975, a tax at the rate of twelve per centum (12%) upon the taxable income of every unincorporated business, whether domestic or foreign (except those expressly exempt under title II of this subchapter); (b) for the taxable years beginning on or after January 1, 1976, a tax at the rate of nine per centum (9%) upon the taxable income of every unincorporated business, whether domestic or foreign, (except those expressly exempt under title II of this subchapter); (c) for the taxable years beginning on or after January 1, 1976, a surtax at the rate of ten per centum (10%) of the tax determined under clause (b) hereof. The minimum tax payable under this section shall be twenty-five dollars (\$25.00). (July 16, 1947, 61 Stat. 346, Art. I, title VIII, § 3; Aug. 2, 1968, Pub. L. 90-450, title II, § 202(b), 82 Stat. 612; Oct. 31, 1969, Pub. L. 91-106, title VI, § 604(a)(2), 83 Stat. 179; Dec. 15, 1971, Pub. L. 92-196, title IV, §§ 402, 404, 85 Stat. 654; Oct. 21, 1975, D.C. Law 1-23, title VI, § 604, 22 DCR 2112; July 27, 1976, D.C. Law 1-77, § 3, 23 DCR 1219; Mar. 16, 1978, D.C. Law 2-58, § 202, 24 DCR 5765.)

Effect of Amendment.

1978—Act March 16, 1978, D.C. Law 2-58, amended section generally.

Legislative History of Law 2-58. See note to § 47-3101.

Title XII.—Assessment and Collection; Time of Payment**§ 47-1586. Duties of Assessor.**

Section referred to in section. 47-3309.

Title XIII.—Penalties and Interest**§ 47-1589. Failure to file return.**

Section referred to in section. 47-3309.

Title XV.—Appeal**§ 47-1593. Appeal to Superior Court of the District of Columbia.**

Section referred to in section. 47-3309.

CHAPTER 16.—INHERITANCE AND ESTATE TAXES

Sec.

Article III — General

47-1631. Secrecy of returns.

Article III—General

§ 47-1631. Secrecy of returns.

Emergency Act Amendments. 1978—For temporary addition of section, see sec. 3 of the Tax Return Confidentiality Emergency Act of 1978 (D.C. Act 2-288, Oct. 25, 1978, 25 DCR 4322); and sec. 3 of the Tax Return Confidentiality Second Emergency Act of 1978 (D.C. Act 2-332, Dec. 29, 1978, 25 DCR 7017).

CHAPTER 23.—GENERAL LICENSE LAW

Cross references. For regulation and licensing of occupational therapists, see § 2-499 et seq. For certification and registration of accountants and accounting firms, see § 2-944 et seq.

Sec.

47-2305. Establishment of licensing periods by Mayor — Prorating for late application.

§ 47-2301. Licenses required for business or profession — Application — Transfer of license — Signing and sealing.

NOTES TO DECISIONS

Cited in *Hsu v. Thomas* (D.C. 1978, 387 A.2d 588).

§ 47-2305. Establishment of licensing periods by Mayor — Prorating for late application.

The Mayor of the District of Columbia is authorized to fix and change from time to time the period for which any license authorized under this act may be issued. Licenses issued at any time after the beginning of the license years shall date from the 1st day of the month in which the license was issued and end on the last day of the license year above prescribed, and payment shall be made of the proportionate amount of the annual license fee or tax: Provided, that where the license fee is \$3 or less the fee shall not be prorated: And provided further, that no fee or tax shall be prorated to an amount less than \$3. (July 1, 1902, 32 Stat. 623, ch. 1352, § 7, par. 5; July 1, 1932, 47 Stat. 551, ch. 366; Oct. 26, 1977, D.C. Law 2-27, § 3, 24 DCR 3720; Apr. 18, 1978, D.C. Law 2-72, § 3, 24 DCR 7065.)

Effect of Amendment.

1978 — Act April 18, 1978, D.C. Law 2-72, amended section by deleting “5” and inserting “3” in lieu thereof at both places it occurred.

Legislative History of Law 2-72. See note to § 1-257.

§ 47-2311. Massage establishments — Turkish, Russian, or medicated baths.

NOTES TO DECISIONS

This section provides adequate notice of proscribed conduct, so that judges and juries may fairly administer the law in accordance with the legislative intent. *Deinlein v. District of Columbia* (D.C. 1978, 386 A.2d 296).

This section comports with the basic due process standards of definiteness and sufficiency of notice as to

proscribed conduct. *Deinlein v. District of Columbia* (D.C. 1978, 386 A.2d 296).

Usage of “massage” conveys meaning. — Since the term “massage” has a universally accepted definition in society, the usage in this section of “massage” without further explication is sufficient to convey the meaning

intended by the cross-sexual massage prohibition. *Deinlein v. District of Columbia* (D.C. 1978, 386 A.2d 296). **does not affect illegality** of that contact. *Deinlein v. District of Columbia* (D.C. 1978, 386 A.2d 296).

Brevity of contact between persons of opposite sex

§ 47-2328. Classification of buildings containing living quarters for licenses — Fees — Buildings exempt from license requirement.

NOTES TO DECISIONS

Cited in *Hsu v. Thomas* (D.C. 1978, 387 A.2d 588).

§ 47-2331. Vehicles for hire — Hackers' licenses — Identification tags on vehicles — Sightseeing vehicles for school children, occasional purposes — Ambulances, private vehicles for funeral purposes — Issuance of licenses — Payment of fees.

Section referred to in section. 40-103.

§ 47-2338. Guides.

NOTES TO DECISIONS

Section inapplicable to federal concessionaire. — The Secretary of the Interior's exclusive control over the shuttle service between the Mall and the Stadium under 40 U.S.C. § 804 precluded application to a federal concessionaire of local District of Columbia laws relating

to vehicle registration and inspection and tour guide licensing but did not preclude application of local laws relating to certification of foreign corporations. *United States v. District of Columbia* (1977, 571 F.2d 651, 187 U.S. App. D.C. 217).

§ 47-2340. Dealers in dangerous weapons.

NOTES TO DECISIONS

Cited in *McIntosh v. Washington* (D.C. 1978, 395 A.2d 744).

CHAPTER 24.—SUPERIOR COURT, TAX DIVISION

§ 47-2403. Appeal from assessment — Hearing and decision.

NOTES TO DECISIONS

Cited in *Trustees of Nineteenth St. Baptist Church v. District of Columbia* (D.C. 1978, 385 A.2d 8).

§ 47-2404. Review by court — Decision of Superior Court, when final — Modification or reversal.

NOTES TO DECISIONS

Cited in *Trustees of Nineteenth St. Baptist Church v. District of Columbia* (D.C. 1978, 385 A.2d 8.)

CHAPTER 25.—MISCELLANEOUS PROVISIONS

§ 47-2501c. Annual Federal payment — Duties of Mayor and Council — Submittal of request to President.

Emergency Act Amendment.

1978 — For emergency request for payment pursuant to section, see sec. 2 of the Emergency Federal Payment

Request for FY 1980 Act (D.C. Act 2-308, Nov. 29, 1978, 25 DCR 5535).

CHAPTER 26.—GROSS SALES TAX

Sec.
47-2615. Secrecy of returns — Reciprocity.

§ 47-2601. Definitions.

Section referred to in section. 45-1681.

§ 47-2602. Imposition of tax.

Emergency Act Amendment.

1978 — For temporary amendment of section, see the Rental Vehicle Tax Reform Emergency Act of 1978 (D.C.

Acts 2-264, Aug. 16, 1978, 25 DCR 2431); sec. 6 of the Second Rental Vehicle Tax Reform Emergency Act of 1978 (D.C. Act 2-306, Nov. 27, 1978, 25 DCR 5529).

§ 47-2605. Exemptions.

Emergency Act Amendment.

1978 — For temporary amendment of section, see sec. 2 of the Senior Citizens Residences Sales Tax on Meals

Exemption Emergency Act of 1978 (D.C. Act 2-302, Nov. 27, 1978, 25 DCR 5477).

§ 47-2609. Tax a preferred calim — Priority over property taxes.

NOTES TO DECISIONS

Cited in *District of Columbia Redevelopment Land Agency v. Eleven Parcels of Land in Squares* (1978, 589 F.2d 628).

§ 47-2615. Secrecy of returns — Reciprocity.

(a) Except to any official of the District, having a right thereto in his official capacity, it shall be unlawful for any officer or employee of the District to divulge or make known in any manner the amount of gross proceeds or any particulars relating thereto or the computation thereof set forth or disclosed in any return required to be filed under this chapter, and neither the original nor a copy of any such return desired for use in litigation in court shall be furnished where neither the District nor the United States is interested in the result of such litigation, whether or not the request is contained in an order of the court: Provided, however, that nothing herein contained shall be construed to prevent the furnishing to a taxpayer a copy of his return upon the payment of a fee of \$3.50.

* * * * *

(As amended Mar. 16, 1978, D.C. Law 2-57, § 4, 24 DCR 5426.)

Effect of Amendment.

1978 — Act March 16, 1978, D.C. Law 2-57, amended section by deleting the figure “\$ 2.” in the last sentence of subsection (a) and inserting in lieu thereof the figure “\$ 3.50.”

Legislative History of Law 2-57. See note to § 47-306.
Section referred to in section. 47-3105.

§ 47-2616. Determination of deficiencies.

Section referred to in section. 47-3105.

§ 47-2617. Refunds.

Section referred to in section. 47-3105.

§ 47-2618. Appeals.

Section referred to in section. 47-3105.

§ 47-2619. Sales in bulk.

Section referred to in section. 47-3105.

§ 47-2621. Additional powers.

Section referred to in section. 47-3105.

§ 47-2622. Examination of records and witnesses.

Section referred to in section. 47-3105.

§ 47-2623. Certificate of registration.

Section referred to in section. 47-3105.

§ 47-2624. Penalties and interest.

Section referred to in section. 47-3105.

§ 47-2625. Failure to file return.

Section referred to in section. 47-3105.

§ 47-2626. Assessment of deficiencies — Limitations thereupon.

Section referred to in section. 47-3105.

§ 47-2627. Prosecutions.

Section referred to in section. 47-3105.

§ 47-2628. Notices — How given.

Section referred to in section. 47-3105.

§ 47-2629. Extensions of time.

Section referred to in section. 47-3105.

CHAPTER 31.—HOTEL OCCUPANCY TAX

Sec.	Subchapter I.—In General	Sec.	
47-3101.	Definitions.	47-3108.	Contents of annual revenue data estimates and projections.
47-3102.	Imposition and rate of tax.	47-3109.	Analysis of revenue and cost data and recommendations.
47-3103.	Exemptions.	47-3110.	Adoption of tax and rate structures.
47-3104.	Returns and payment of tax.	47-3111.	Limit on expenditures for civic center.
47-3105.	Incorporation of certain existing D.C. Code sections.	47-3112.	Jobs.
47-3106.	Regulations.		Subchapter III.—Effective Dates
	Subchapter II.—Mayor’s Reports	47-3113.	Effective date of subchapter I.
47-3107.	Required—Contents generally.		

Subchapter I.—In General

§ 47-3101. Definitions.

For the purposes of this chapter:

- (a) The term “person” means any individual, partnership, society, association, joint stock company, corporation, estate, receiver, trustee, assignee, referee, or any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, and any combination of individuals or of the foregoing.
 - (b) The term “operator” means any person operating a hotel in the District of Columbia, including, but not limited to, an owner or proprietor of such premises, or a lessee, sublessee, mortgagee in possession, licensee, or any other person otherwise operating such hotel.
 - (c) The term “occupant” means any person who, for a consideration, uses, possesses, or has the right to use or possess, any room or rooms in a hotel under any lease, concession, permit, right of access, license to use, or other agreement.
 - (d) The term “occupancy” means the use or possession, or the right to the use or possession, by any person of any room or rooms in a hotel.
 - (e) The term “hotel” means any hotel, motel, inn, tourist camp, tourist cabin, or any other place in which rooms, lodgings, or accommodations are regularly furnished to persons other than permanent residents.
 - (f) The term “room” means any room of any kind, other than a bathroom or lavatory, in any part or portion of a hotel, which use or possession is available for or let out for any purpose other than as a place of assembly.
 - (g) The term “rent” means the consideration received by an operator for occupancy valued in money, whether received in money or otherwise, including all receipts, cash, credits, property or services of any kind or nature, and also any amount for which credit is allowed by the operator to the occupant, without any deduction therefrom whatsoever.
 - (h) The term “permanent resident of a hotel” means any occupant of a room or rooms in a hotel for ninety (90) consecutive days or more.
 - (i) The term “place of assembly” means any room rented by the operator or used by the operator exclusively for dining, meetings, dances, entertainment, exhibitions, and the like. This term does not include any room or suites of rooms which are also customarily used or rented for sleeping accommodations.
 - (j) The term “Mayor” means the Mayor of the District of Columbia as established under section 1-161, or his duly authorized representative.
 - (k) The term “District” means the District of Columbia.
- (Mar. 16, 1978, D.C. Law 2-58, § 101, 24 DCR 5765.)

Legislative History of Law 2-58. Law 2-58 was introduced in Council and assigned Bill No. 2-169, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on September 13, 1977 and October 11, 1977, respectively. Signed by the Mayor on December 30, 1977, it was

assigned Act No. 2-127 and transmitted to both Houses of Congress for its review.

Short title. The first section of act March 16, 1978, D.C. Law 2-58, 24 DCR 5765, provided "That this act may be cited as the 'Hotel Occupancy and Surtax on Corporations and Unincorporated Business Tax Act of 1977.'"

§ 47-3102. Imposition and rate of tax.

(a) There is hereby imposed and there shall be paid a tax at the rate of eighty cents (80¢) for every occupancy of each room (irrespective of the number of occupants in each room) in a hotel in the District of Columbia. The tax shall apply to each occupancy of a room each time a daily rate or less than a daily rate is charged for such occupancy. If the rate charged for the occupancy is more than for a daily period, the tax shall apply to each room for each day of occupancy during such period.

(b) The tax hereby imposed is in addition to any other taxes imposed on the sale or charges for such rooms or occupancy, and shall be separately stated from all other charges or taxes.

(c) The tax hereby imposed shall be collected from the occupant by the operator and held by the operator in trust for the District of Columbia. The operator shall be liable for payment of the tax to the District of Columbia whether or not he or she has collected such tax from the occupant. The operator, and each and every officer of any corporate operator, shall be personally liable for the tax collected or required to be collected under this subchapter. The operator shall have the same right in respect to collecting the tax from the occupant, or in respect to nonpayment of the tax by the occupant, as if the tax were a part of the rent for the occupancy payable at the time such tax shall become due and owing, including all rights of eviction, dispossession, repossession and enforcement of any innkeeper's lien that he may have in the event of nonpayment of rent by the occupant.

(d) Where the occupant has failed to pay and the operator has failed to collect the tax imposed by this subchapter, then in addition to all other rights, obligations and remedies provided in this chapter, such tax shall be payable by the occupant directly to the District, and it shall be the duty of the occupant to file a return thereof with the District and to pay the tax imposed by this subchapter. (Mar. 16, 1978, D.C. Law 2-58, § 102, 24 DCR 5765.)

Legislative History of Law 2-58. See note to § 47-3101.

§ 47-3103. Exemptions.

The tax imposed by this subchapter shall not apply to occupancy by:

(a) permanent residents of a hotel;

(b) the United States government or any of its instrumentalities when payments for the occupancy are made directly to the operator by the United States government or its instrumentalities;

(c) the District of Columbia government or any of its instrumentalities when payments for the occupancy are made directly to the operator by the District of Columbia government or its instrumentalities; and

(d) members of the foreign diplomatic corps who possess and display to the operator a valid and current exemption card issued to them by the Department of State of the United States. (Mar. 16, 1978, D.C. Law 2-58, § 103, 24 DCR 5765.)

Legislative History of Law 2-58. See note to § 47-3101.

§ 47-3104. Returns and payment of tax.

(a) Every operator or any other person liable for the tax imposed by this subchapter shall file a return for each calendar month on or before the twentieth (20th) day of the month immediately succeeding such calendar month or at such other times and for such other periods

as the Mayor may prescribe. The return shall be in such form and contain such information as the Mayor may prescribe.

(b) At the time of filing the return as provided by this title, the operator or any other person liable for tax under this subchapter, shall pay to the District the taxes imposed by this subchapter. The taxes for the period for which a return is required to be filed, by an operator or any other person liable for tax under this subchapter, shall be due from the operator or such other person, and payable to the District on the date prescribed for the filing of the return for such period, without regard to whether a return is filed. (Mar. 16, 1978, D.C. Law 2-58, § 104, 24 DCR 5765.)

Legislative History of Law 2-58. See note to § 47-3101.

§ 47-3105. Incorporation of certain existing D.C. Code sections.

The provisions of sections 47-2615, 47-2616, 47-2617, 47-2618, 47-2619, 47-2621, 47-2622, 47-2623, 47-2624, 47-2625, 47-2626, 47-2627, 47-2628, and 47-2629, are hereby incorporated in and made a part of this subchapter. For the purposes of this subchapter, wherever the word “vendors” appears in the aforementioned sections, it shall include operators and any other person liable for tax under this subchapter, and wherever the word “Assessor” appears it shall be deemed to mean the Mayor. (Mar. 16, 1978, Law 2-58, § 105, 24 DCR 5765.)

Legislative History of Law 2-58. See note to § 47-3101.

§ 47-3106. Regulations.

The Mayor is hereby authorized to promulgate regulations implementing this subchapter. (Mar. 16, 1978, Law 2-58, § 106, 24 DCR 5765.)

Legislative History of Law 2-58. See note to § 47-3101.

Subchapter II.—Mayor’s Reports

§ 47-3107. Required — Contents generally.

The Mayor shall report to the Council each year, on or before the date he or she submits to the Council a budget as required under section 47-221, on the detailed and total annual costs and revenues associated with the civic center. Such report shall include cost and revenue data beginning with the first year the costs were incurred in planning, constructing, or operating a civic center and ending with cost and revenue data in the most recent time period for which data are available. Each report shall also include cost and revenue projections for five (5) years in the future from the date each report is submitted. (Mar. 16, 1978, D.C. Law 2-58, § 301, 24 DCR 5765.)

Legislative History of Law 2-58. See note to § 47-3101.

Section referred to in sections. 47-3108, 47-3109, 47-3112.

§ 47-3108. Contents of annual revenue data estimates and projections.

Annual revenue data estimates and projections, as required under section 47-3107, shall include, but not be limited to:

(a) direct, indirect, and induced revenues resulting from construction and operation of the civic center, including but not limited to revenues from the operation of the civic center, real property tax revenue increases, hotel occupancy tax revenues, retail sales tax revenue increases, income tax revenue increases, plus other revenues generated by the civic center, less taxes and other revenues generated by land, buildings, jobs and other sources from land uses which were replaced or displaced by the civic center and replaced or displaced by the indirect effects of the

civic center (these revenues shall be listed in detail and all assumptions used in developing estimates and projections shall be clearly stated); and

(b) direct and indirect costs resulting from construction and operation of the civic center, including but not limited to start-up administrative costs, capital construction costs, capital improvements, direct and indirect operating costs, financing of capital costs, costs of additional city services required by the civic center, and other administrative and other costs.

(Mar. 16, 1978, D.C. Law 2-58, § 302, 24 DCR 5765.)

Legislative History of Law 2-58. See note to § 47-3101.

§ 47-3109. Analysis of revenue and cost data and recommendations.

As part of the report required by section 47-3107, the Mayor shall analyze the revenue and cost data required by section 47-3107. When necessary, the Mayor shall recommend to the Council tax and rate structure changes which would (a) terminate or reduce the hotel occupancy tax imposed by subchapter I of this chapter and/or terminate or reduce the corporate and unincorporated business surtax extended by sections 47-1571a and 47-1574b in the event that direct and indirect revenues exceed direct and indirect costs associated with construction and operation of the civic center, or (b) increase the hotel occupancy tax imposed by subchapter I of this chapter and/or increase the corporate and unincorporated business surtax extended by sections 47-1571a and 47-1574b in the event that direct and indirect revenues do not exceed the direct and indirect costs associated with the operation and construction of the civic center without such further tax rate increases. (Mar. 16, 1978, D.C. Law 2-58, § 303, 24 DCR 5765.)

Legislative History of Law 2-58. See note to § 47-3101.

Section referred to in section. 47-3110.

§ 47-3110. Adoption of tax and rate structures.

The Council of the District of Columbia shall evaluate annually the recommendations proposed by the Mayor under section 47-3109, and adopt tax and rate structure changes which would terminate or reduce the hotel occupancy tax imposed by subchapter I of this chapter and/or (a) terminate or reduce the corporate and unincorporated business surtax extended by sections 47-1571a and 47-1574b in the event that direct and indirect revenues exceed direct and indirect costs associated with construction and operation of the civic center, or (b) increase the hotel occupancy tax imposed by subchapter I of this chapter and/or increase the corporate and unincorporated business surtax extended by sections 47-1571a and 47-1574b in the event that direct and indirect revenues do not exceed direct and indirect costs associated with operation and construction of the civic center without such further tax rate increases. (Mar. 16, 1978, D.C. Law 2-58, § 304, 24 DCR 5765.)

Legislative History of Law 2-58. See note to § 47-3101.

§ 47-3111. Limit on expenditures for civic center.

The District government may expend on civic center construction and operation, no more than fifty percent (50%) of the revenues received from the corporate and unincorporated business surtax enacted and extended under sections 47-1571a and 47-1574b. (Mar. 16, 1978, D.C. Law 2-58, § 305, 24 DCR 5765.)

Legislative History of Law 2-58. See note to § 47-3101.

§ 47-3112. Jobs.

At the same time the Mayor submits cost and revenue data as required by section 43-3107, the Mayor shall report to the Council of the District of Columbia on the total number of jobs, in person-years and in payroll dollars, created by the construction and operation of the civic

center, and the portion of those jobs which are held by minorities, women, and District of Columbia residents. (Mar. 16, 1978, D.C. Law 2-58, § 306, 24 DCR 5765.)

Legislative History of Law 2-58. See note to § 47-3101.

Subchapter III.—Effective Dates

§ 47-3113. Effective date of subchapter I.

Subchapter I of this chapter shall become effective on May 1, 1978. (Mar. 16, 1978, D.C. Law 2-58, § 401, 24 DCR 5765.)

Legislative History of Law 2-58. See note to § 47-3101.

CHAPTER 32.—CONSUMER TRANSMISSION OF MONEY ACT

Sec.	Sec.
47-3201. Definitions.	47-3210. Agent.
47-3202. License required.	47-3211. Liability of licensees.
47-3203. Exemptions.	47-3212. Disclosure of responsibility.
47-3204. Qualifications.	47-3213. Maximum charge.
47-3205. Applications.	47-3214. Revocation of license investigations.
47-3206. Accompanying fee, statements and bond.	47-3215. Hearings.
47-3207. Granting of license; investigations.	47-3216. Penalties.
47-3208. Maintenance of bond or securities.	47-3217. Severability.
47-3209. Annual license fee.	

§ 47-3201. Definitions.

For the purpose of this chapter:

- (a) the term “check” means any check, draft, money order, personal money order or other instrument for the transmission or payment of money other than a traveler’s check.
- (b) the term “deliver” means to transfer possession of a check to the first person who, in payment for same, makes or purports to make a remittance of or against the face amount thereof whether or not the deliveror also charges a fee in addition to the face amount and whether or not the deliveror signs the check.
- (c) the term “licensee” means a person duly licensed by the Mayor under this chapter.
- (d) the term “Mayor” means the Mayor of the District of Columbia or his designee.
- (e) the term “person” means any individual, partnership, association, joint stock association, trust or corporation but does not include the United States government, the government of the District of Columbia or the United States Postal Service.
- (f) the term “personal money order” means any instrument for the transmission or payment of money which is signed by the purchaser or remitter whether or not he appoints the seller of the money order as his agent for the receipt, transmission or handling of money and whether or not such instrument is also signed by some other person in addition to the purchaser or remitter.
- (g) the term “sell” means to sell, to issue or to deliver a check.

(Oct. 4, 1978, D.C. Law 2-114, § 2, 25 DCR 1985.)

Legislative History of Law 2-114. Law 2-114 was introduced in Council and assigned Bill No. 2-210, which was referred to the Committee on Public Services and Consumer Affairs. The Bill was adopted on first and second readings on June 13, 1978 and June 27, 1978, respectively. Signed by the Mayor on July 21, 1978, it was

assigned Act No. 2-242 and transmitted to both Houses of Congress for its review.

Short title. The first section of act Oct. 4, 1978, D.C. Law 2-114, 25 DCR 1985, provided “That this act may be cited as the ‘District of Columbia Consumer Transmission of Money Act of 1978.’ ”

§ 47-3202. License required.

No person, except those specifically exempted in section 47-3203 or agents of a licensee as provided in section 47-3210, shall engage in the business of selling checks, as a service or for a fee or other consideration, in the District of Columbia without having first obtained a license under the provisions of this chapter. Any person engaged in such business on the effective date of this chapter may continue to engage therein without a license until the Mayor has acted upon his application for a license: Except, that such application must be filed within sixty (60) days after the effective date of this chapter. (Oct. 4, 1978, D.C. Law 2-114, § 3, 25 DCR 1985.)

Legislative History of Law 2-114. See note to § 47-3201.

§ 47-3203. Exemptions.

This chapter does not apply to any of the following:

- (a) Banks, credit unions, trust companies, building and loan associations and savings and loan associations organized under the laws of the United States or of the District of Columbia or authorized to do business in the District of Columbia and the United States Postal Service; and
- (b) Incorporated telegraph companies insofar as they receive money at any of their respective offices or agencies for immediate transmission by telegraph.

(Oct. 4, 1978, D.C. Law 2-114, § 4, 25 DCR 1985.)

Legislative History of Law 2-114. See note to § 47-3201.

Section referred to in section. 47-3202.

§ 47-3204. Qualifications.

To qualify for a license under this chapter, an applicant must meet the following requirements:

- (a) The applicant must have a net worth of at least one hundred thousand dollars (\$100,000) computed according to generally accepted accounting principles.
- (b) The financial responsibility, financial condition and business experience of the applicant must be such as to reasonably warrant the belief that applicant's business will be conducted honestly and carefully to the extent deemed advisable by the Mayor as set forth in section 47-3207.

(Oct. 4, 1978, D.C. Law 2-114, § 5, 25 DCR 1985.)

Legislative History of Law 2-114. See note to § 47-3201.

Section referred to in section. 47-3207.

§ 47-3205. Applications.

Each application for a license under this chapter shall be made in writing and under oath to the Mayor in such form as he may prescribe. The application shall state the full name and business address of:

- (1) the proprietor, if the applicant is an individual;
- (2) each member, if the applicant is a partnership or association;
- (3) each trustee or other officer, if the applicant is a trust; or
- (4) the corporation and each officer and director thereof, if the applicant is a corporation.

(Oct. 4, 1978, D.C. Law 2-114, § 6, 25 DCR 1985.)

Legislative History of Law 2-114. See note to § 47-3201.

Compiler's change. The original act numbered the first paragraph as "(a)". Since there is no "(b)," the "(a)" has been deleted.

§ 47-3206. Accompanying fee, statements and bond.

(a) Each application for a license shall be accompanied by:

(1) an investigation fee of two hundred fifty dollars (\$250) which shall not be subject to refund but which, if the license is granted, shall constitute the license fee for the first license year or part thereof;

(2) financial statements reasonably satisfactory to the Mayor; and

(3) a list of all locations, including agents and their addresses, where business is conducted in the District of Columbia;

(4) a surety bond issued by a bonding company or insurance company, authorized to do business in the District of Columbia, in the principal sum of fifty thousand dollars (\$50,000). Each applicant shall annually file a similar bond with the Mayor prior to the issuance of the renewal license for any calendar year in the amounts provided herein. For a licensee with average total outstanding and unpaid checks for the previous year of not over fifty thousand dollars (\$50,000), the bond shall be fifty thousand dollars (\$50,000). For a licensee with average total outstanding and unpaid checks for the previous year in excess of fifty thousand dollars (\$50,000) but less than seventy-five thousand dollars (\$75,000), the bond shall be seventy-five thousand dollars (\$75,000). For a licensee with average total outstanding and unpaid checks for the previous license year in excess of seventy-five thousand dollars (\$75,000), the bond shall be one hundred thousand dollars (\$100,000). The bond shall be in a form satisfactory to the Mayor and shall run to the District of Columbia for the benefit of any claimants against the applicant or his agents to secure the faithful performance of the obligations of the applicant and his agents with respect to the receipt, handling, transmission and payment of money in connection with the sale of checks in the District of Columbia. Such claimants, against the applicant or his agents, may themselves bring suit directly on the bond or the Corporation Counsel may bring suit thereon in behalf of such claimants either in one action or successive actions. The aggregate liability of the surety in no event shall exceed the principal sum of the bond. The bond shall be without expiration date: Except, that the surety shall have the right to cancel such bond, upon giving not less than thirty (30) days written notice to the Mayor, but such cancellation shall not release the surety from any liability that may arise with respect to obligations of the applicant outstanding on or prior to the day that such bond is canceled.

(b) In lieu of a corporate surety bond or bonds or of any portion of the principal thereof as required by subsection (a) (4) of this section, the applicant may deposit with the Mayor or with such banks or trust companies or national banks in the District of Columbia, as such applicant may designate, and the Mayor may approve interest-bearing stocks or bonds, notes, debentures or other obligations of the United States or any agency or instrumentality thereof, or guaranteed by the United States or the District of Columbia in an aggregate amount, based upon principal amount or market value, whichever is lower, of not less than the amount of the required corporate surety bond or portion thereof. The securities shall be deposited as mentioned above and held to secure the same obligations as would the surety bond but the depositor shall be entitled to receive all interest and dividends thereon and shall have the right, with the approval of the Mayor, to substitute other securities for those deposited. (Oct. 4, 1978, D.C. Law 2-114, § 7, 25 DCR 1985.)

Legislative History of Law 2-114. See note to § 47-3201.

Section referred to in section. 47-3208.

§ 47-3207. Granting of license; investigations.

(a) Upon the filing of an application in due form, including the required fee and accompanying documents, the Mayor shall issue to the applicant a license to engage in the selling of checks in the District of Columbia, unless the Mayor finds that the qualifications prescribed by subsection (b) of this section and by section 47-3204 have not been met.

(b) The financial responsibility, conditions and business experience of the applicant or licensee must be such as to warrant the belief that the applicant's business will be conducted honestly and carefully. The Mayor may investigate and consider the qualifications of the applicant or licensee (including the officers and directors of the applicant) in determining whether this qualification has been met. (Oct. 4, 1978, D.C. Law 2-114, § 8, 25 DCR 1985.)

Legislative History of Law 2-114. See note to § 47-3201.

Section referred to in section. 47-3204.

§ 47-3208. Maintenance of bond or securities.

After a license has been granted, the licensee shall maintain said bond or securities in the amount prescribed by section 47-3206 (a) (4) as follows:

(a) Each licensee shall file quarterly reports with the Mayor setting forth the locations at which he sells checks in the District of Columbia as of January 1, April 1, July 1 and October 1 of each year the report for each such date is due on, or before the fifteenth (15) day thereafter.

(b) If the Mayor shall at any time determine that the bond or securities aforesaid are insecure, deficient in amount, exhausted in whole or part or if the surety on the bond shall have notified the Mayor of its intention to cancel the bond, he shall, by written order, require the filing of a new or supplemental bond or the deposit of new or additional securities in order to secure compliance with this chapter. Such order is to be complied with within thirty (30) days following service thereof upon the licensee. (Oct. 4, 1978, D.C. Law 2-114, § 9, 25 DCR 1985.)

Legislative History of Law 2-114. See note to § 47-3201.

§ 47-3209. Annual license fee.

Each licensee shall pay to the Mayor annually, on the date determined by the Mayor, a license fee of two hundred fifty dollars (\$250). (Oct. 4, 1978, D.C. Law 2-114, § 10, 25 DCR 1985.)

Legislative History of Law 2-114. See note to § 47-3201.

§ 47-3210. Agent.

A licensee may conduct his business at one (1) or more locations within the District of Columbia and through or by means of such agents as the licensee may from time to time designate or appoint. No license under this chapter shall be required of any agent of a licensee. (Oct. 4, 1978, D.C. Law 2-114, § 11, 25 DCR 1985.)

Legislative History of Law 2-114. See note to § 47-3201.

Section referred to in section. 47-3202.

§ 47-3211. Liability of licensees.

Each licensee shall be liable for the payment of all checks which he sells in the District of Columbia, in whatever form and whether directly or through an agent, as the maker or drawer thereof according to the laws governing negotiable instruments in the District of Columbia. A licensee who sells a check, whether directly or through an agent, upon which he is not designated

as the maker or drawer, shall nevertheless have the same liabilities with respect thereto as if he had signed the same as the drawer thereof. (Oct. 4, 1978, D.C. Law 2-114, § 12, 25 DCR 1985.)

Legislative History of Law 2-114. See note to § 47-3201.

§ 47-3212. Disclosure of responsibility.

Every check sold by a licensee, directly or through an agent, shall bear the name of the licensee clearly imprinted thereon. (Oct. 4, 1978, D.C. Law 2-114, § 13, 25 DCR 1985.)

Legislative History of Law 2-114. See note to § 47-3201.

§ 47-3213. Maximum charge.

No licensee or his agent shall charge a fee for selling or cashing checks in excess of one (1%) percent of the face amount thereof or fifty cents (\$0.50), whichever is greater. (Oct. 4, 1978, D.C. Law 2-114, § 14, 25 DCR 1985.)

Legislative History of Law 2-114. See note to § 47-3201.

§ 47-3214. Revocation of license investigations.

The Mayor may revoke a license on the same grounds on which he may refuse to grant a license or for violation of any provision of this chapter. In furtherance of the foregoing, the Mayor, if he has reasonable cause to believe that the grounds for revocation exist, may investigate the business, books and records of the licensee. (Oct. 4, 1978, D.C. Law 2-114, § 15, 25 DCR 1985.)

Legislative History of Law 2-114. See note to § 47-3201.

§ 47-3215. Hearings.

No license shall be denied, suspended or revoked except after notice and an opportunity to be heard. Hearings under this section shall be governed by the District of Columbia Administrative Procedure Act (D.C. Code, sec. 1-1509). (Oct. 4, 1978, D.C. Law 2-114, § 16, DCR 1985.)

Legislative History of Law 2-114. See note to § 47-3201.

§ 47-3216. Penalties.

Any person who violates any provision of this chapter shall be guilty of a misdemeanor, shall be fined not more than one thousand dollars (\$1,000) or imprisoned for not more than one (1) year, or both. Prosecutions shall be made by the Corporation Counsel in the Superior Court of the District of Columbia. (Oct. 4, 1978, D.C. Law 2-114, § 17, 25 DCR 1985.)

Legislative History of Law 2-114. See note to § 47-3201.

§ 47-3217. Severability.

The provisions of this chapter are severable and if any provision, sentence, clause, section or part is held illegal, invalid, unconstitutional or inapplicable to any person or circumstances such holding shall not affect or impair any of the remaining provisions, sentences, clauses, sections or parts of the chapter or their application to other persons or circumstances. It is hereby

declared to be the legislative intent that this chapter would have been adopted if such illegal, invalid, unconstitutional or applicable provision, sentence, clause, section or part had not been included herein and if the person or circumstances to which the chapter or any part is inapplicable had been specifically exempted. (Oct. 4, 1978, D.C. Law 2-114, § 18, 25 DCR 1985.)

Legislative History of Law 2-114. See note to § 47-3201.

CHAPTER 33.—RESIDENTIAL REAL PROPERTY TRANSFER EXCISE TAX

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Subchapter I.—Definitions

§ 47-3301. Definitions.

For the purposes of this chapter, unless otherwise indicated:

(a) The term “basis” shall have the same meaning as does that term when determining gain or loss under subtitle A, chapter 1, subchapter O, part II of the Internal Revenue Code (68A Stat. 4 et seq.; 26 U.S.C. § 1 et seq.).

(b) The term “Charter” means title IV of the District of Columbia Self-Government and Governmental Reorganization Act (87 Stat. 785; D.C. Code, sec. 1-124).

(c) The term “Commission” means the Real Estate Commission of the District of Columbia as established in section 45-1403.

(d) The term “consideration” means the amount paid or required to be paid, or the value exchanged or required to be exchanged by a transferee to acquire residential real property.

(e) The term “Council” means the Council of the District of Columbia established under section 1-141.

(f) The term “dealer in residential real property” and the term “dealer” means any person who transfers three (3) or more residential real properties within a period of thirty (30) months. The following transfers of residential real property (as defined by this subchapter) shall not be considered for the purpose of determining whether the transferor is a dealer:

- (1) transfers prior to the effective date;
- (2) transfers of a transferor's principal residence (as defined by this subchapter);

(3) transfers to or by a District of Columbia nonprofit organization which is organized and operated for the purpose of constructing, improving, or renovating residential real property: Provided, that such organization is exempt from federal income taxation under section 501 (a) and is described in section 501 (c) (3) of the Internal Revenue Code. Transfers by such organization must be made in furtherance of the organization's exempt purpose;

(4) transfers to or by the federal government or the government of the District of Columbia, their agencies and instrumentalities, and the first transfer after the transfer by said governments: Provided, that said first transfer after the transfer by said governments is governed by laws and regulations pertaining to a housing or community development program administered by the District or federal government;

(5) transfers in which the transferee neither gives nor is required to give any consideration in any form (including transfers by gift, deeds of correction, deeds which merely change tenancy, and deeds of trust): Provided, that the basis of the property in the hands of the transferee shall be the same as it was in the hands of the transferor;

(6) transfers where the property being transferred was received by the transferor without giving or being required to give any consideration in any form: Provided, that the transferor shall prove by clear and convincing evidence, upon all the facts and circumstances, that the transfer in which the transferor received the property was not made for the purpose of excluding the instant transfer from consideration in determining if the transferor is a dealer (as defined by this subsection). It shall be presumed that the transfer in which the transferor received the property without consideration was made for the purpose of excluding the instant transfer from consideration in determining whether the transferor is a dealer. The transferor must include sufficient information on the return, filed pursuant to section 47-3306, to rebut said presumption. The regulations prescribed by the Mayor shall set forth the information which will be deemed sufficient to rebut said presumption;

(7) transfers by devise, or as a result of intestate succession;

(8) transfers where the property being transferred was received by the transferor by devise or as a result of intestate succession;

(9) transfers executed by persons in their capacity as court-appointed receivers, referees, administrators, executors, conservators, guardians of the estates of minors, and committees of the estates of persons judicially determined to be mentally incompetent;

(10) the first transfer of property, the construction of which was completed after the effective date (as defined by this subchapter) regardless of when the construction began. The construction of property shall be considered complete at the time such construction is completed to the same extent required for the issuance of a certificate of occupancy, as that term is used in section 5-422. This paragraph applies only to newly-constructed structures and not to rehabilitated structures;

(11) foreclosure sales, and the first transfer thereafter if said first transfer is made by the mortgagee who instituted the foreclosure proceedings and purchased the property at the foreclosure sale, or obtained title directly from the defaulting party without a foreclosure sale: Provided, that said mortgagee is licensed in the District of Columbia as a bank or other financial institution;

(12) deeds of release of property where the property was security for a debt or other obligation; and

(13) transfers by a transferor whose holding period (as defined by this subchapter) for the property being transferred was longer than thirty-six (36) months.

(g) The term "deed recordation tax" means the tax imposed by section 45-723.

(h) The term "deficiency" shall have the same meaning given to that term by section 47-1551c(q).

(i) The term "effective date" means the date on which this chapter takes effect according to the provisions of section 1-147(c) (1).

(j) The term "equitable title" means a right in a party to have the legal title to a residential real property (or real property, solely for purposes of subchapter III of this chapter) transferred

to such party. The term shall also include any right to receive equitable title by means of an option to purchase or otherwise.

(k) The term "gain" means the excess of the consideration received by a transferor over the transferor's basis for the property (as defined by this subchapter) transferred.

(l) The term "fair market value" means the price at which a willing seller and a willing buyer will trade or the price which would in all probability have been arrived at between a willing seller and a willing buyer.

(m) The term "holding period" shall have the same meaning as does that term for purposes of section 1223 of the Internal Revenue Code.

(n) The term "Internal Revenue Code" means the Internal Revenue Code of 1954 (68 Stat. 4 et seq.; 26 U.S.C. § 1 et seq.) and any amendments thereto.

(o) The term "legal holiday" means any District of Columbia public holiday, including Saturday and Sunday, as designated by section 28-2701.

(p) The term "legal title" means complete and perfect title to residential real property (or real property, solely for purposes of subchapter III of this chapter) in the party to whom such title belongs so far as regards the apparent right of ownership and possession of the residential real property (or real property, solely for purposes of subchapter III of this chapter) but which carries no beneficial interest in the property, another person being equitably entitled thereto.

(q) The term "major appliances" shall include the following appliances if a transferor transfers such appliances when transferring residential real property: refrigerator, cooking range, oven, dishwasher, garbage disposal, trash compactor, and washer and dryer.

(r) The term "Mayor" means the Mayor of the District of Columbia established under section 1-161.

(s) The term "person" means any individual, firm, partnership, copartnership, joint venture, association, corporation (domestic or foreign), trust, trustee of any estate, or court appointed receiver.

(t) The term "principal residence" shall have the same meaning as does that term for purposes of section 1034 of the Internal Revenue Code: Except, that in determining whether a residential real property is the principal residence of a transferor, in addition to consideration of all the facts and circumstances as provided by section 1034 of the Internal Revenue Code, the property must have been the principal residence of the transferor for the one hundred and eighty (180) day period immediately preceding the transfer.

(u) The term "real covenant" means an agreement between two (2) or more persons relating to a property, the terms of which shall be binding on any heir or assign of the promisor under the agreement and which shall be enforceable by the person holding legal title to said property.

(v) The term "real property" means improved as well as unimproved land in the District of Columbia.

(w) The term "residential real property" or "property" means improved real property in the District of Columbia which at any time during the twelve (12) months immediately preceding its transfer contained not more than four (4) dwelling units. The term "dwelling unit" shall have the same meaning as given to that term in the Zoning Regulations of the District of Columbia (chapter I, article 12, section 1202, page 5, as amended through May 11, 1977).

(x) The term "solicitation" means any act which would cause a person to come within the definition of solicitor of residential real property.

(y) The term "solicitor of residential real property" means a person who, without prior invitation from the holder of legal title to a residential real property, offers to purchase or expresses a desire to purchase such property, or in any other way attempts to persuade or induce such holder to sell or otherwise transfer such title.

(z) The term "tax", "excise" or "excise tax" means the tax imposed by this chapter.

(aa) The term "third party" means all persons who are not parties to a contract, agreement, or instrument of writing by which their interest in the thing conveyed is sought to be effected.

(bb) The term "transfer" means a transaction by which residential real property (or real property, solely for purposes of subchapter III of this chapter), or any title or right to receive any title thereto, or any portion thereof, or any interest therein (except a proprietary lease and

a rental lease, unless such rental lease includes an option or right to buy) is either directly or indirectly conveyed, vested, granted, devised, bargained, sold, exchanged or assigned by any document, instrument, writing, agreement, or by any means whatsoever.

(cc) The term “transferee” means the person (or persons) to whom a transfer of residential real property (or real property, solely for purposes of subchapter III of this chapter) is made.

(dd) The term “transferor” means the person (or persons) who makes a transfer of residential real property (or real property, solely for purposes of subchapter III of this chapter).

(ee) The term “vacant” means not occupied by the person having legal title or other title to the property and without other lawful occupants.

(July 13, 1978, D.C. Law 2-91, § 101, 24 DCR 9765.)

Emergency Act Amendment.

1978 — For temporary enactment of chapter, see the Home Purchase Assistance Fund Emergency Authorization Act of 1978 (D.C. Act 2-213, July 1, 1978, 25 DCR 1972).

Legislative History of Law 2-91. Law 2-91 was introduced in Council and assigned Bill No. 2-101, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first, amended first, second amended first reading, and second readings on February

21, 1978, March 7, 1978, March 21, 1978 and April 4, 1978, respectively. Signed by the Mayor on April 27, 1978, it was assigned Act No. 2-189 and transmitted to both Houses of Congress for its review.

Short title. The first section of the act of July 13, 1978, D.C. Law 2-91, 24 DCR 9765, provided “That this act may be cited as the ‘Residential Real Property Transfer Excise Tax Act of 1978.’ ”

Section referred to in sections. 28-2701, 45-723, 47-3304.

Subchapter II.—Residential Real Property Transfer Excise Tax

§ 47-3302. Imposition of excise tax.

(a) Except as provided under subsections (b) and (d) of this section and section 47-3303, there is hereby imposed, in addition to all other taxes, an excise tax on the transfer of residential real property. The transferor shall be liable for payment of the excise.

(b) If a transferor transfers both equitable title and legal title to a residential real property, then the tax imposed in subsection (a) of this section shall apply only to the transfer of the legal title to the property.

(c) Where two (2) or more transferors jointly transfer property, each transferor shall be jointly and severally liable for the excise tax imposed in subsection (a).

(d) The tax imposed by subsection (a) of this section shall be applied only during the three (3) year period after the effective date. (July 13, 1978, D.C. Law 2-91, § 201, 24 DCR 9765.)

Legislative History of Law 2-91. See note to § 47-3301.

Section referred to in sections. 47-3303, 47-3307.

§ 47-3303. Exempt transfers.

The following transfers of property are exempt from the excise tax imposed by this subchapter:

(a)(1) transfers of property which the transferor warrants in writing that the property is fit for occupancy and use and against defective structure, materials and workmanship for a period of two (2) years from the date of the transfer. Said two (2) year warranty shall apply to the cost of labor, materials, and any related costs for at least the following: roof; guttering and downspout; heating system (including furnace); electrical system; plumbing system; hot water heater and tank; dry basement and air-conditioning system;

(2) transfers of property which the transferor warrants in writing that the major appliances, as defined in subchapter I of this chapter, transferred with the property are fit for the purpose for which they were made and against defective materials and workmanship, for a period of one (1) year from the date of the transfer, not to exceed the period of coverage of any manufacturer’s warranty on any major appliance. Said one (1) year warranty shall apply to the cost of labor, materials and any related costs for such appliances. The warranties set forth in paragraphs (1) and (2) of this subsection shall be real covenants during the period of their

duration and shall not include the cost of labor, materials, and any related costs for damage intentionally or negligently caused by the transferee nor shall they include maintenance work resulting from normal wear and tear; and

(3) transfers of property which are certified by a District of Columbia agency designated by the Mayor that the property meets the standards required by the applicable articles of chapters 1 and 2 of the Housing Regulations of the District of Columbia as of the date of the transfer. A transferor claiming an exemption under this subsection shall submit a written request to the agency designated by the Mayor requesting an inspection of the property. Such agency shall within twenty (20) calendar days after receipt of such request, issue in writing a statement setting forth the street address and the lot and square number of the property inspected, the date of inspection, the name of the inspector and whether the property meets the standards required by the applicable articles of chapters 1 and 2 of the Housing Regulations of the District of Columbia. If such agency, after inspection, determines that the property does not meet the standards required by the applicable articles of chapters 1 and 2 of the Housing Regulations of the District of Columbia, the statement issued by the agency shall set forth the reasons for such determination;

(4) If such agency fails within said twenty (20) calendar day period to complete the inspection and issue a written statement, as set forth in paragraph (3), indicating whether the property meets the standards required by the applicable articles of chapters 1 and 2 of the Housing Regulations of the District of Columbia, then in lieu thereof the transferor may under the following preconditions certify that the property meets said articles of the Housing Regulations of the District of Columbia:

(A) a person selected by or approved in writing by the transferee inspects the property;

(B) that the person selected is a professional engineer (i.e., electrical, structural, mechanical, or civil) or a contractor licensed by the District of Columbia government;

(C) the person inspecting the property states in writing, item by item, whether the property meets the standards required by the applicable articles of chapters 1 and 2 of the Housing Regulations of the District of Columbia;

(D) such inspector's written itemized statement is provided to the transferor and a copy provided to the transferee; and

(E) any costs incurred for the inspection are borne by the transferor only.

Within thirty (30) days from the effective date, the Mayor shall develop such forms and procedures as are necessary to carry out the provisions of this subsection. The warranties set forth in paragraphs (1) and (2) of this subsection and the certification set forth in paragraphs (3) and (4) of this subsection, whichever is applicable, shall be executed only on the forms developed by the Mayor, and shall be executed under oath and fully acknowledged. The transferor giving the warranties set forth in this subsection shall provide a copy to the transferee and file a copy with the Mayor in a manner prescribed by the Mayor. A copy of the certification as provided by paragraphs (3) and (4) of this subsection, whichever is applicable, shall be provided to the transferor and the transferee and a copy shall be filed with the Mayor in a manner prescribed by the Mayor. The warranties and certification filed with the Mayor shall be listed on a public record determined by the Mayor;

(b) transfers of a transferor's principal residence;

(c) transfers by an employee of the United States government whose principal residence is outside of the Washington, D.C. Standard Metropolitan Statistical Area: Provided, that the transferor resided in the property for the six (6) month period immediately preceding the transfer;

(d) the first transfer, during the first six (6) months after the effective date, of residential real property which was vacant on or before July 1, 1977 and which has been vacant since that date;

(e) transfers to or by the federal government or the government of the District of Columbia, their agencies and instrumentalities, and the first transfer after the transfer by said governments: Provided, that said first transfer after the transfer by said governments is

governed by laws and regulations pertaining to a housing or community development program administered by the District or federal government;

(f) transfers to or by a District of Columbia nonprofit organization which is organized and operated for the purpose of constructing, improving, or renovating residential real property: Provided, that such organization is exempt from federal income taxation under section 501 (a) and is described in section 501 (c) (3) of the Internal Revenue Code. Transfers by such organization must be made in furtherance of the organization's exempt purpose;

(g) transfers in which the transferee neither gives nor is required to give any consideration, in any form (including transfers by gift, deeds of correction, deeds which merely change tenancy, and deeds of trust): Provided, that the basis of the property in the hands of the transferee shall be the same as it was in the hands of the transferor;

(h) the first transfer of property, the construction of which was completed after the effective date, regardless of when construction began. The construction of property shall be considered complete at the time such construction is completed to the same extent required for the issuance of a certificate of occupancy, as that term is used in section 5-422. This subsection shall apply only to newly constructed structures and not to rehabilitated structures;

(i) foreclosure sales, and the first transfer thereafter if said first transfer is made by the mortgagee who instituted the foreclosure proceedings and purchased the property at the foreclosure sale, or obtained title directly from the defaulting party without a foreclosure sale: Provided, that said mortgagee is licensed in the District of Columbia as a bank or other financial institution;

(j) deeds of release of property where the property was security for a debt or other obligation;

(k) transfers by devise, or as a result of intestate succession;

(l) transfers where the property being transferred was received by devise or as a result of intestate succession;

(m) transfers executed by persons in their capacity as court-appointed receivers, referees, administrators, executors, conservators, guardians of the estates of minors, and committees of the estates of persons judicially determined to be mentally incompetent;

(n) transfers pursuant to a valid and binding separation agreement and by court order pursuant to a separation or divorce decree;

(o) transfers by involuntary conversion as defined in section 1033 of the Internal Revenue Code; and

(p)(1) transfers of residential real property in exchange solely for residential real property of a like kind (as defined in section 1031 of the Internal Revenue Code): Provided, that each party to such exchange shall keep the same basis in the property received as that party had in the property transferred.

(2) If an exchange would be exempt under paragraph (1) of this subsection if it were not for the fact that the exchange consisted not only of property of a like kind but also of money or other consideration, then the exchange shall be taxable under section 47-3302. Each party to the exchange shall be treated as a transferor of the property exchanged by that party. The consideration received by each transferor shall be the fair market value of the property received plus the amount of any money or other consideration received. Each transferor shall have a basis in the property received equal to the fair market value of the property exchanged by that transferor plus any money or other consideration given by that transferor and minus any money or other consideration received by that transferor.

(July 13, 1978, D.C. Law 2-91, § 202, 24 DCR 9765.)

Legislative History of Law 2-91. See note to § 47-3301.

Section referred to in sections. 47-3302, 47-3306, 47-3307, 47-3308, 47-3310, 47-3311, 47-3322.

§ 47-3304. Determination of excise tax.

The excise imposed by this subchapter is determined as follows:

- (a) compute the transferor’s gain as defined in section 47-3301;
 - (b) compute the percentage of gain by expressing gain as a percentage of basis;
 - (c) determine the applicable tax rate by matching the percentage of gain with the appropriate holding period in the table in section 47-3305;
 - (d) determine the tax liability by multiplying the applicable tax rate by the transferor’s gain.
- (July 13, 1978, D.C. Law 2-91, § 203, 24 DCR 9765.)

Legislative History of Law 2-91. See note to § 47-3301.

§ 47-3305. Excise tax table.

TAX SCHEDULE

Holding Period (in months or fractions thereof)

Remainder as percentage of prior consideration	0-6	7-12	13-18	19-24	25-30	31-36
11	10	0%	0%	0%	0%	0%
12	17	0	0	0	0	0
13	24	0	0	0	0	0
14	29	0	0	0	0	0
15	34	0	0	0	0	0
16	38	5	0	0	0	0
17	42	18	0	0	0	0
18	45	22	0	0	0	0
19	48	26	0	0	0	0
20	50	30	0	0	0	0
21-22	55	33	10	0	0	0
23-24	59	39	17	0	0	0
25-26	62	48	24	0	0	0
27-28	65	52	30	0	0	0
29-30	67	55	34	7	0	0
31-32	69	58	39	16	0	0
33-34	71	61	42	21	0	0
35-36	73	63	46	26	3	0
37-38	74	65	49	30	8	0
39-40	75	67	51	33	15	0
41-43	77	68	54	37	20	0
44-46	79	70	57	41	25	0
47-49	80	72	60	45	34	6
50-55	82	76	64	50	38	14
56-59	84	79	68	55	45	27
60-65	85	80	70	58	48	32
66-70	86	82	71	62	53	38
71-75	87	83	73	65	56	42
76-80	88	84	75	67	59	46
81-90	89	85	77	69	62	49
91-99	90	87	79	73	66	55
100-109	91	89	82	76	70	61
110-119	92	90	84	78	73	65
120-134	93	91	85	80	75	68

TAX SCHEDULE

Holding Period (in months or fractions thereof)

Remainder as percentage of prior consideration	0-6	7-12	13-18	19-24	25-30	31-36
135-149	94	92	87	82	78	71
150-174	95	93	88	84	80	74
175-199	95	94	90	86	83	78
200-249	96	95	92	89	85	82
250-299	97	96	93	91	88	85
300 +	97	97	95	93	90	88

(July 13, 1978, D.C. Law 2-91, § 204, 24 DCR 9765.)

Legislative History of Law 2-91. See note to § 47-3301.
Section referred to in section. 47-3304.

§ 47-3306. Mayor authorized to develop tax return form.

The Mayor shall develop no later than thirty (30) days after the effective date the following:

- (a) a residential real property transfer tax return form or forms; and
- (b) regulations and procedures governing the filing of returns on a quarterly basis for transferors claiming any exemption under section 47-3303 whose volume of exempt transfers is such that it would be unduly burdensome to require the filing of a separate return for each such transfer. All returns required under this subchapter shall be filed on the forms and in the manner prescribed by the Mayor.

(July 13, 1978, D.C. Law 2-91, § 205, 24 DCR 9765.)

Legislative History of Law 2-91. See note to § 47-3301.
Section referred to in sections. 47-3301, 47-3307, 47-3308.

§ 47-3307. Payment of tax.

(a) Except as provided in section 47-3302 (b) and section 47-3306 (b), within thirty (30) days after the execution of a deed or other document by which legal title to a property is transferred (unless the thirtieth (30th) day is a legal holiday, in which case the first day thereafter which is not a legal holiday), all transferors of legal title and all transferors of equitable title to such property, including all transferors claiming any exemption under section 47-3303, shall:

- (1) file with the Mayor a completed residential real property transfer tax return and any other information the Mayor requires; and
- (2) pay into a depository designated by the Mayor the full amount of the tax due under this subchapter, if any.

(b) Where a transfer qualifies under section 453 of the Internal Revenue Code (relating to the installment method), and where the tax imposed under this subchapter is five hundred dollars (\$500) or greater, the Mayor shall prescribe procedures and regulations providing for the payment of the tax in installments: Except, that the tax must be paid in full within three (3) years from the date of the transfer. (July 13, 1978, D.C. Law 2-91, § 206, 24 DCR 9765.)

Legislative History of Law 2-91. See note to § 47-3301.

§ 47-3308. Tax return.

(a) In the case of a transfer described in subsection (p) (2) of section 47-3303, each transferor shall include in the return required by section 47-3306, the current one hundred (100) percent

assessed market value, as of the date of the like kind exchange. Whenever a return contains insufficient information as to the one hundred (100) percent assessed market value, the Mayor is authorized to make a reasonable determination thereof from the best information available.

(b) Where the property being transferred was received by the transferor by gift, the transferor's return must include the amount and kind of consideration given by the transferor's donor in acquiring such property, and said donor's basis for such property as of the date of the gift. If such information is not available, the Mayor shall make a determination thereof from the best information available.

(c) Where a transfer is exempt from the tax, the transferor's return shall only need to include sufficient information to establish the exemption claimed. The Mayor by regulation shall set forth what information is to be deemed sufficient to establish the exemption claimed.

(d) A transferor shall maintain documentation to support the information in the return for three (3) years after the date of the transfer. (July 13, 1978, D.C. Law 2-91, § 207, 24 DCR 9765.)

Legislative History of Law 2-91. See note to § 47-3301.

§ 47-3309. Return; assessment and collection; time of payment; penalties and interest; appeal.

To the extent applicable to the provisions and purposes of this title, the following sections shall apply for purposes of administration of this title: section 47-1564b (b), section 47-1586, section 47-1589, and section 47-1593. (July 13, 1978, D.C. Law 2-91, § 208, 24 DCR 9765.)

Emergency Act Amendment.

1978 — For temporary amendment of section, see sec. 4 of the Tax Return Confidentiality Emergency Act of 1978 (D.C. Act 2-288, Oct. 25, 1978, 25 DCR 4322).

Legislative History of Law 2-91. See note to § 47-3301.

§ 47-3310. Willful breach of warranty.

(a) If the Mayor or a court of competent jurisdiction in the District of Columbia determines that any warranty provided under section 47-3303(a) has been willfully breached or intentionally dishonored and but for such warranty the transfer would have been subject to the tax, then the tax and any additions thereto that would have been due from the transferor shall become due and payable in the same manner as if such warranty never existed. The Mayor by regulation shall set forth the standards and administrative process to be followed for the determination by the Mayor that a warranty has been willfully breached or intentionally dishonored.

(b) If the Mayor determines that a warranty has been willfully breached or intentionally dishonored, in addition to any other penalties, the Mayor shall order the warrantor to do either of the following, at the option of the warrantee:

(1) make the repairs, which form the basis of the breach, to the satisfaction of the warrantee; or

(2) pay to the warrantee, after the receipt of two (2) estimates in writing from the warrantee, the full amount necessary to have the repairs made by some person other than the warrantor.

Where the transferor certified that the property meets the standards set forth in the applicable articles of chapters 1 and 2 of the Housing Regulations of the District of Columbia as set forth in section 47-3303 (a) (4) and where such certification was false or based on false information and the transferor knew or should have known of such falsification or false information, then the Mayor shall determine that the warranty, as provided by section 47-3303 (a) (1), has been willfully breached and the provisions of this subsection shall apply. (July 13, 1978, D.C. Law 2-91, § 209, 24 DCR 9765.)

Legislative History of Law 2-91. See note to § 47-3301.

§ 47-3311. Report by Mayor.

The Mayor shall report to the Council by February 1st of each year for the preceding fiscal year, the following information for the District of Columbia:

- (a) the number of transactions falling within each exemption provided by section 47-3303;
- (b) the sales prices for transactions falling within each exemption under section 47-3303;
- (c) the holding periods for all transactions subject to the tax imposed by this subchapter;
- (d) the sales prices for transactions subject to the tax imposed by this subchapter;
- (e) the average holding period for transactions subject to the tax imposed by this subchapter;
- (f) the average gain for transactions subject to the tax imposed by this subchapter;
- (g) the number of evictions caused by each transaction, if any; and
- (h) the Mayor shall require that the Department of Finance and Revenue provide for this report the following:
 - (1) the number of unincorporated business tax returns filed by dealers in residential real property, and the states in which the returns were filed including the District of Columbia;
 - (2) the average number of transfers per return and the total from each jurisdiction; and
 - (3) the total amount of unincorporated business taxes paid by those engaged in the buying and selling of residential real property, and the average per return.

(July 13, 1978, D.C. Law 2-91, § 210, 24 DCR 9765.)

Legislative History of Law 2-91. See note to § 47-3301.

§ 47-3312. Authorization to promulgate regulations.

The Mayor shall promulgate regulations to carry out the provisions of this subchapter. (July 13, 1978, D.C. Law 2-91, § 211, 24 DCR 9765.)

Legislative History of Law 2-91. See note to § 47-3301.

*Subchapter III. — Compulsory Recordation of Transfers of
Real Property*

§ 47-3313. Compulsory recordation.

(a) Within thirty (30) days after the execution of a deed or other document by which legal title to a real property is transferred, all transferees of said legal title shall record a fully acknowledged copy of said deed or other document, including the lot and square number of the real property transferred, with the Recorder of Deeds of the District of Columbia. If the thirtieth (30th) day is a legal holiday, the time for recording shall be extended to include the first day after the thirtieth (30th) day which is not a legal holiday.

(b) Whenever any portion of an instrument, which conveys or provides for the conveyance of equitable title to a real property, is transferred by or on behalf of a party to such instrument to a third party, then the party so transferring shall record, at the same time as provided by subsection (a) of this section, a fully acknowledged copy of said instrument, including the lot and square number of the real property transferred, with the Recorder of Deeds of the District of Columbia, and the third party shall record, at the same time as provided by subsection (a) of this section, with the Recorder of Deeds of the District of Columbia a fully acknowledged instrument, including the lot and square number of the property transferred, evidencing the transfer to himself (or herself or itself as the case may be). All subsequent transfers of equitable title made prior to the transfer of legal title shall be recorded by each subsequent transferee thereto, in the same manner and at the same time as provided in subsection (a) of this section. (July 13, 1978, D.C. Law 2-91, § 301, 24 DCR 9765.)

Legislative History of Law 2-91. See note to § 47-3301.

Section referred to in sections. 45-725, 47-3314, 47-3315.

§ 47-3314. Presumptions and burden of proof.

For the purpose of proper administration of this subchapter and to prevent evasion of the recordation requirements, the Mayor shall presume that all transfers, as described in section 47-3313, are required to be recorded. The burden shall be upon the person required to record to prove that a deed or any other document is exempt from the recordation requirement. (July 13, 1978, D.C. Law 2-91, § 302, 24 DCR 9765.)

Legislative History of Law 2-91. See note to § 47-3301.

§ 47-3315. Penalties for failure to record.

(a) Where a dealer fails to record, as required by section 47-3313, and such failure is due to negligence, there shall be imposed on said dealer, a penalty of twenty-five dollars (\$25.00) for each month or portion thereof that such failure continues, not to exceed two hundred fifty dollars (\$250.00).

(b) Any dealer who with the intent to evade the tax imposed in subchapter II of this chapter, knowingly fails to record, as required by section 47-3313, or who knowingly makes a false or misleading statement in connection with such recordation, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and shall be fined not more than five thousand dollars (\$5,000) or imprisoned for not more than one (1) year, or both, together with costs of prosecution. All prosecutions under this section shall be brought in the Superior Court of the District of Columbia on information by the Corporation Counsel in the name of the District of Columbia. The word "dealer", in addition to the meaning assigned to that term in subchapter I of this chapter, shall, for purposes of this subsection, include an officer or an employee of a corporation, or a member or an employee of a partnership, who is under a duty to perform the act in respect to which the violation occurs.

(c) Where a person other than a dealer fails to record, as required by section 47-3313, there shall be imposed on such person a penalty in the amount of ten dollars (\$10.00) for each month or portion thereof that such failure continues, not to exceed fifty dollars (\$50.00). Whenever it is shown by such person that failure to record was due to reasonable cause and was not due to knowing omission or neglect, the Mayor may waive part of or all of the penalty fee provided by this subsection. In every case of a partial or total waiver, the reason for the waiver shall be stated clearly on a public record determined by the Mayor.

(d) Any person other than a dealer, who with the intent to evade the tax imposed in subchapter II of this chapter, knowingly fails to record, as required by section 47-3313, or who knowingly makes a false or misleading statement in connection with such recordation, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and shall be fined not more than five thousand dollars (\$5,000) or imprisoned for not more than one (1) year, or both, together with cost of prosecution.

(e) The penalty fees provided under this section shall be collected at the same time and in the same manner and as a part of the deed recordation tax. If the transaction is exempt from the deed recordation tax, then the Mayor shall collect the fees in a manner prescribed by the Mayor.

(f) If the Mayor determines that a person has failed to record or has failed to pay any fee as required by this chapter, the procedures set forth in section 45-728 shall apply. (July 13, 1978, D.C. Law 2-91, § 303, 24 DCR 9765.)

Legislative History of Law 2-91. See note to § 47-3301.

*Subchapter IV. — Licensing of Dealers in Residential
Real Property*

§ 47-3316. Definitions.

For the purposes of this subchapter:

(a) The term “real estate broker” or “broker” shall have the same meaning as given the term “real estate broker” in section 45-1402.

(b) The term “real estate salesman” or “salesman” shall have the same meaning as given the term “real estate salesman” in section 45-1402.

(c) The term “firm”, unless otherwise indicated, means a partnership, copartnership, association, corporation (foreign or domestic) or unincorporated business.

(July 13, 1978, D.C. Law 2-91, § 401, 24 DCR 9765.)

Legislative History of Law 2-91. See note to § 47-3301.

§ 47-3317. Requirement of license.

On and after one hundred eighty (180) days from the effective date, it shall be unlawful in the District of Columbia for a dealer to transfer residential real property, other than property which is a dealer’s principal residence, without a license issued by the Commission. A dealer’s license shall be obtained by a person prior to a transfer which would cause the transferor to be deemed a dealer. When a person required by this subchapter to be licensed as a dealer fails to acquire a license, but demonstrates to the Mayor that such failure was due to reasonable cause and was not due to knowing omission or neglect, the Mayor may waive part or all of any penalty imposed for failure to acquire a license: Provided, that lack of knowledge as to any provision of this chapter shall not constitute reasonable cause. (July 13, 1978, D.C. Law 2-91, § 402, 24 DCR 9765.)

Legislative History of Law 2-91. See note to § 47-3301.

§ 47-3318. Application for license.

(a) A license to act as a dealer under the provisions of this subchapter shall not be issued to any person who has not applied for the license required by this subchapter or whose license to act as a dealer was revoked in the District of Columbia during the twelve (12) month period immediately preceding the date of the application for said license.

(b) Except as provided in subsection (e) of this section, the application of every firm for a license to be a dealer shall state:

(1) the address or addresses of the principal place or places of business for which the license is desired;

(2) a complete list of all former addresses where the applicant was engaged in any real estate business for a continuous period of at least thirty (30) days;

(3) the name and residence address of each employee, member, officer or associate who participates as a dealer in the applicant’s business of dealing in residential real property;

(4) in the case of a corporation, the application shall also state the name and address of each officer, director and registered agent. In the case of a firm other than a corporation, the application shall also state the name and address of each partner, associate, member or employee who is authorized to accept legal notice on behalf of the organization; and

(5) the address, including lot and square number, of each property located in the District of Columbia, which was transferred in whole or in part by or on behalf of the applicant during the twenty-four (24) month period immediately preceding the date of the application.

(c) Except as provided in subsection (e) of this section, the application of each individual associated with a firm for a license to be a dealer shall state:

(1) the full name and residence address of the applicant;

(2) the full name and business address of the firm with which such applicant is associated, the length of time such applicant has been so associated, and in what capacity; and

(3) the period of time, if any, during which said applicant was or has been engaged as a real estate broker, salesman, or dealer, together with a complete list of all former addresses where the applicant was so engaged for a period of thirty (30) days or more preceding the date of application.

(d) Except as provided in subsection (e) of this section, the application of each individual, not affiliated with a firm or other entity, for a license to be a dealer shall state the same information as required in subsection (c) paragraphs (1) and (2) of this section.

(e) Whenever any applicant for a license to be a dealer is licensed as a real estate broker or real estate salesman in the District of Columbia, such applicant shall not be required to repeat on the application for a dealer's license any information that the applicant has provided on an application for a broker's or salesman's license which is currently on file with the Commission. (July 13, 1978, D.C. Law 2-91, § 403, 24 DCR 9765.)

Legislative History of Law 2-91. See note to § 47-3301.

§ 47-3319. Issuance and display of license.

(a) The Commission shall issue a non-transferable license to each dealer qualifying for such under the provisions of this subchapter. A dealer's license shall be in such form and size as prescribed by the Commission. Every license shall show the name and address of the dealer to whom it is issued, and if applicable, the full name and address of the firm with which said dealer is associated. Each license shall have imprinted thereon the seal of the Commission, and such other matter as shall be prescribed by the Commission. All dealers shall display their licenses conspicuously in their places of business.

(b) No license shall be issued by the Commission to a firm unless every employee, member or officer who participates in such firm as a dealer is licensed as required by this subchapter. (July 13, 1978, D.C. Law 2-91, § 404, 24 DCR 9765.)

Legislative History of Law 2-91. See note to § 47-3301.

§ 47-3320. License expiration, fees and renewals.

(a) Every license to be a dealer shall expire on the anniversary date of its issuance.

(b) The fee for the initial dealers license shall be one hundred dollars (\$100).

(c) The annual fee for any renewal of a license shall be one hundred dollars (\$100) in the case of a dealer who transfers twenty (20) or more residential real properties during the twelve (12) months immediately preceding the written request for such renewal; seventy-five dollars (\$75) in the case of a dealer who transfers at least ten (10) but no more than nineteen (19) such properties during said period; fifty dollars (\$50) in the case of a dealer who transfers at least five (5) but not more than nine (9) such properties during said period; and twenty-five dollars (\$25) in the case of a dealer who transfers four (4) or fewer such properties during said period: Provided, that whenever a person licensed in the District of Columbia as a real estate broker or real estate salesman applies for an initial license to be a dealer or requests renewal thereof, the amount of the fee paid for the broker's or salesman's license shall be applied toward satisfaction of the fee for a dealer's license. In determining the number of transfers by a dealer during the twelve (12) months immediately preceding the transfer, all transfers made by the dealer (except the transfer of the dealer's principal residence) shall be considered, including transfers made by the dealer prior to being deemed as a dealer.

(d) Notwithstanding subsections (b) and (c) of this section, no fee shall be charged for any initial license or renewal thereof issued to any firm where all of the employees, members or officers who actively participate in the firm's business of dealing in residential real property have been issued a dealer's license.

(e) On written request of the applicant, upon receipt of the annual fee and in the absence of any reason warranting refusal, the Commission shall renew each dealer's license annually. The causes for suspension and revocation of a dealer's license as set forth in section 47-3323 shall serve as reasons warranting the Commission to refuse to renew a dealer's license. A dealer must also submit all facts necessary to keep all information in the initial application for a dealer's license accurate, complete, and current. An applicant who, on or before the applicable

anniversary date, fails to file the written request to renew and to pay the appropriate renewal fee must comply with all the provisions of this subchapter applicable to a person making an initial application for a dealer's license.

(f) Upon a change in the location of the principal place of business of a dealer, said dealer shall give, in writing, notice of such change to the Commission. The Commission shall prescribe the time within which said notice must be received in order that said notice be considered as timely. At the time notice is given, said dealer must surrender the dealer's license to the Commission. Failure to notify the Commission or to return the license automatically cancels the dealer's license. When timely notice is given to the Commission, it may, without additional fee, issue a new dealer's license for the balance of the year, where applicable: Provided, that said dealer files a written request for such new license. (July 13, 1978, D.C. Law 2-91, § 405, 24 DCR 9765.)

Legislative History of Law 2-91. See note to § 47-3301.

§ 47-3321. Dealer's place of business and nonresident dealers.

(a) Except as provided in subsection (b) of this section, every dealer licensed under the provisions of this subchapter shall maintain a place of business in the District of Columbia. If a dealer maintains more than one place of business within the District of Columbia, a duplicate license shall be issued to such dealer for each additional office maintained. The fee charged for such duplicate license shall not exceed its cost to the District of Columbia.

(b) A nonresident of the District of Columbia may become a dealer by complying with all of the requirements of this title: Except, that such nonresident need not maintain a place of business within the District of Columbia.

(c) Every nonresident applicant for a dealer's license shall comply with the provisions of section 45-1410(2). (July 13, 1978, D.C. Law 2-91, § 406, 24 DCR 9765.)

Legislative History of Law 2-91. See note to § 47-3301.

§ 47-3322. Suspension or revocation of license.

(a) Paragraphs (a), (b), (c), (j), (k), and (p) of section 45-1408 shall be applicable to dealers as causes for suspension or revocation of a dealer's license.

(b) In addition to subsection (a) of this section, the Commission, may, upon its own motion, and shall, upon the verified complaint in writing of any person (provided such complaint or such complainant together with evidence, documentary or otherwise, presented in connection therewith, establishes a prima facie case), investigate the conduct of any dealer. Within thirty (30) days after the receipt by the Commission of said verified complaint the Commission shall notify said complainant in writing as to its decision or other action taken with regard to the complaint. The Commission shall have the power at any time to suspend or to revoke a license issued under the provisions of this title: Provided, that in the case of a knowing violation of subsections (b) (1) and (2) of this section, the Commission shall at minimum suspend the license for not less than one (1) month: Provided, further, that the dealer shall be prohibited from signing any additional contracts for the sale of houses for that period, if the dealer has:

(1) failed to file the return and pay the excise tax as required by subchapter II of this chapter, or knowingly made any false or misleading statement in connection therewith;

(2) failed to record a transfer as required by subchapter III of this chapter, or to pay the deed recordation tax, or has made a false or misleading statement in connection with such recordation or recordation tax;

(3) failed to comply with or honor a warranty given pursuant to section 47-3303 (a) (1) or (a) (2);

(4) violated any of the Commission's regulations pertaining to dealers;

(5) made a false or misleading statement concerning a certification, given pursuant to

paragraphs (3) or (4) of section 47-3303(a); or

(6) violated any of the provisions of section 47-3323 (b).

(July 13, 1978, D.C. Law 2-91, § 407, 24 DCR 9765.)

Legislative History of Law 2-91. See note to § 47-3301.

§ 47-3323. Fraudulent transfers by dealers.

(a) A contract or agreement for the transfer of property shall be rescindable by the transferee, without penalty, at any time before legal title to the property is transferred, if, at the time of the contract or agreement:

(1) the transferor is a dealer; and

(2) the transferor was not duly licensed as a dealer in the District of Columbia.

(b) A contract or agreement for the transfer of property shall be rescindable by the transferor, without penalty, at any time before legal title to the property is transferred, if the transferor is not a dealer, if the transferee is a dealer, and if the transferee:

(1) fails to furnish the transferor with a fully executed copy of any contract pertaining to the transfer. The Mayor, within thirty (30) days after the effective date, shall develop procedures governing said contract; or

(2) fails, at the time of the execution of the contract, to furnish a notice to the transferor of his or her right to cancel the contract within a period of time to be determined by the Mayor. The Mayor, within thirty (30) days after the date of enactment, shall develop forms and procedures governing such notice; or

(3) fails, before furnishing copies of such notice of cancellation to the transferor, to fully complete said notice form; or

(4) includes in a contract, a confession of judgment or a waiver of any of the rights to which the transferor is entitled under this section, including specifically his or her right to cancel the transfer; or

(5) misrepresents to the transferor the transferor's right to cancel; or

(6) fails or refuses to honor any valid notice of cancellation.

(c) Section 45-1409 shall apply as the procedures for suspension or revocation of a dealer's license. (July 13, 1978, D.C. Law 2-91, § 408, 24 DCR 9765.)

Legislative History of Law 2-91. See note to § 47-3301.

Section referred to in sections. 47-3320, 47-3322.

§ 47-3324. Mayor to notify Commission.

Whenever it comes to the attention of the Mayor that a dealer has failed to file a return and pay the excise tax and other amounts related thereto as provided in subchapter II of this chapter or has failed to record a deed or other document as required by subchapter III of this chapter or to pay the deed recordation tax, or has made a false or misleading statement in connection with such recordation, recordation tax or excise tax, the Mayor shall, in addition to other enforcement procedures, report such failure to the Commission. (July 13, 1978, D.C. Law 2-91, § 409, 24 DCR 9765.)

Legislative History of Law 2-91. See note to § 47-3301.

§ 47-3325. Report by Commission.

The Commission shall report in writing to the Council annually, no later than the first Tuesday in September, on its activities regarding the licensing and disciplining of dealers under the provisions of this subchapter. The report shall include at least the following information for the twelve (12) months immediately preceding the report:

(a) the number of new applications;

(b) the number of initial dealer licenses granted, and renewals thereof;

- (c) the number of dealer licenses suspended or revoked and the reason for such action; and
- (d) the number and amount of any recoveries on bonds and the reasons therefor.

(July 13, 1978, D.C. Law 2-91, § 410, 24 DCR 9765.)

Legislative History of Law 2-91. See note to § 47-3301.

§ 47-3326. Mayor and Commission to promulgate regulations.

(a) The Mayor shall promulgate regulations to carry out the purposes of this subchapter.

(b) Within one (1) year from the effective date, the Commission, after notice and hearings, shall issue regulations establishing standards for the conduct of those soliciting residential real property to insure against harassment, nuisance, misrepresentation, and other unwarranted or abusive practices.

(c) For a violation of the regulations promulgated pursuant to subsection (b) of this section, a solicitor of residential property shall, in addition to any other penalties, be penalized as provided in section 45-1416. (July 13, 1978, D.C. Law 2-91, § 411, 24 DCR 9765.)

Legislative History of Law 2-91. See note to § 47-3301.

Subchapter V.—Miscellaneous Provisions

§ 47-3327. Report of costs and revenues.

(a) For the first, second, and third year after the effective date and not later than the date on which the Mayor's budget proposal is transmitted to the Council, the Mayor shall report to the Council the total and the net cost of administering the provisions of this chapter. The report shall indicate, by department or branch of the District of Columbia government, the cost of administering each title of this chapter. The report shall also indicate the revenues realized under subchapters II, III, and IV of this chapter (including fees, fines, penalties, and excises);

(b) The report required in subsection (a) of this section shall be in addition to any other report or information that is or shall be required. (July 13, 1978, D.C. Law 2-91, § 501, 24 DCR 9765.)

Legislative History of Law 2-91. See note to § 47-3301.

§ 47-3328. Promulgation of regulations to be consistent with Administrative Procedure Act.

The Mayor shall promulgate regulations necessary to carry out the provisions of this chapter and to develop necessary forms and procedures. All regulations promulgated by the Mayor pursuant to this chapter, including those to be promulgated within thirty (30) days after the effective date shall be done so consistent with the District of Columbia Administrative Procedure Act (D.C. Code, sec. 1-1501 et seq.). If compliance with such act would extend promulgation of the regulations beyond thirty (30) days after the effective date then the time for promulgating the regulations shall be extended to thirty (30) days after compliance with the District of Columbia Administrative Procedure Act. (July 13, 1978, D.C. Law 2-91, § 502, 24 DCR 9765.)

Legislative History of Law 2-91. See note to § 47-3301.

Subchapter VI.—Severability—Repealers.

§ 47-3329. Severability — Effect of repealers.

(a) The provisions of this chapter are severable, and if any provision, sentence, clause, section or part is held illegal, invalid, unconstitutional or inapplicable to any person or circumstances, such holding shall not affect or impair any of the remaining provisions, sentences, clauses, sections or parts of the chapter or their application to other persons or circumstances. It is hereby declared to be the legislative intent that this chapter would have been adopted if such illegal, invalid, inapplicable or unconstitutional provision, sentence, clause, section or part had not been included herein and if the person or circumstances to which the chapter or any part

is inapplicable had been specifically exempted.

(b) The repeal or amendment by this chapter of any provision of law shall not affect any act done or any right accrued or accruing under such provision of law before the effective date or under any suit or proceeding had or commenced before the effective date; but all rights and liabilities under such law shall continue and may be enforced in the same manner and to the same extent as if the repeal or amendment had not been made. (July 13, 1978, D.C. Law 2-91, § 601, 24 DCR 9765.)

Legislative History of Law 2-91. See note to § 47-3301.

TITLE 49.—COMPILATION AND CONSTRUCTION OF CODE

Chap.	Sec.
3. Laws Remaining in Force	49-301

CHAPTER 3.—LAWS REMAINING IN FORCE

§ 49-301. Common law, principles of equity and admiralty, and Acts of Congress to remain in force.

NOTES TO DECISIONS

Court did not consider argument that Superior Court has vestigial common-law authority under this section to issue writs ad testificandum extraterritorially. *Christian v. United States* (D.C. 1978, 394 A.2d 1).



Parallel Reference Tables

TABLE 4A.—ACTS OF THE COUNCIL OF THE DISTRICT OF COLUMBIA

Date	D.C. Law	Section	D.C. Code Supp.	Date	D.C. Law	Section	D.C. Code Supp.
1978				1978			
Feb. 2	2-39	1-3	1-226 note.	Mar. 16	2-53	1-17	1-224 note.
Feb. 22	2-40	1	omitted.		2-54	101	45-1681 note.
	2-40	2	44-216, 216.1, 217, 218.		2-54	102	45-1681.
	2-40	3-5	omitted.		2-54	201	45-1682.
Feb. 25	2-41	1	omitted.		2-54	202	45-1683.
	2-41	2	40-101, 103.		2-54	203	45-1684.
	2-41	3	omitted.		2-54	204	45-1685.
	2-41	4	40-201.		2-54	205	45-1686.
	2-41	5	omitted.		2-54	206	45-1687.
	2-42	1-7	omitted.		2-54	207	45-1688.
Feb. 28	2-43	1	32-341 note.		2-54	208	45-1689.
	2-43	2	32-341.		2-54	209	45-1690.
	2-43	3	32-342.		2-54	210	45-1691.
	2-43	4	32-343.		2-54	211	45-1692.
	2-43	5	32-344.		2-54	212	45-1693.
	2-43	6	32-345.		2-54	213	45-1694.
	2-43	7	32-346.		2-54	214	45-1695.
	2-43	8	32-347.		2-54	215	45-1696.
	2-43	9	32-348.		2-54	216	45-1697.
	2-43	10	32-349.		2-54	301	45-1698.
	2-43	11	32-350.		2-54	302	45-1699.
	2-43	12	32-351.		2-54	303	45-1699.1.
	2-43	13	32-352.		2-54	304	45-1699.2.
	2-43	14	32-353.		2-54	305	45-1699.3.
	2-43	15	32-354.		2-54	306	45-1699.4.
	2-43	16	32-355.		2-54	401	45-1699.5.
	2-43	17	omitted.		2-54	501	45-1699.6.
	2-44	1-4	47-632 note.		2-54	502	45-1699.7.
	2-45	1	47-659 note.		2-54	601	45-1699.8.
	2-45	2	47-659.		2-54	602	45-1699.9.
	2-45	3	47-659.1.		2-54	603	45-1699.10.
	2-45	4	47-1567g.		2-54	604	45-1699.11.
	2-45	5	47-642.		2-54	605	5-1281.
	2-45	6	47-659.2.		2-54	701	45-1699.12.
	2-45	7	47-659.3.		2-54	702	45-1699.13.
	2-45	8	47-659.4.		2-54	703	45-1699.14.
	2-45	9	47-659.5.		2-54	704	45-1699.15.
	2-45	10	47-650 Rep.		2-54	705	45-1699.16.
	2-45	11	47-659.7.		2-54	706	45-1699.17.
	2-45	12	47-659.6.		2-54	707	45-1699.18.
Mar. 10	2-46	1	1-146d note.		2-54	801	45-1699.19.
	2-46	2	1-181 to 187, 191 to 195.		2-54	802	45-1699.20.
	2-46	3	omitted.		2-54	803	45-1699.21.
Mar. 8	2-47	1-8	omitted.		2-54	804	5-732b, 45-1699.22.
Mar. 9	2-48	1-8	omitted.		2-54	805	45-1699.23.
	2-49	1-8	omitted.		2-54	901	45-1699.24.
Mar. 10	2-50	1	omitted.		2-54	902	45-1699.25.
	2-50	2	1-1104.			903	45-1631 to 45-1674 Rep.
	2-50	3	omitted.		2-54		
	2-51	1-8	omitted.		2-54	904	45-1699.26.
Mar. 16	2-52	1	omitted.		2-55	905	omitted.
	2-52	2	47-1105.		2-55	906	45-1699.27.
	2-52	3	omitted.		2-55	1	omitted.
					2-55	2	40-103.
					2-55	3	40-103.

TABLE 4A.—ACTS OF THE COUNCIL OF THE DISTRICT OF COLUMBIA—Continued

Date	D.C. Law	Section	D.C. Code Supp.	Date	D.C. Law	Section	D.C. Code Supp.
1978				1978			
Mar. 16	2-55	4	omitted.	Mar. 16	2-61	2	12-302, 28:1— 103, 29-921.
	2-55	5	40-103.				
	2-55	6, 7	omitted.		2-61	3	omitted.
	2-56	1-7	omitted.		2-62	1	omitted.
	2-57	1	omitted.		2-62	2	6-1802, 1812, 1813, 1814, 1816, 1817, 1820, 1821, 1831, 1846, 1849, 1851, 1852, 1861, 1878.
	2-57	2	47-306.				
	2-57	3	47-1564c.				
	2-57	4	47-2615.				
	2-57	5	47-306.1.				
	2-57	6	omitted.				
	2-58	100	47-3101 note.				
	2-58	101	47-3101.		2-62	3	omitted.
	2-58	102	47-3102.		2-63	1-5	9-301 note.
	2-58	103	47-3103.		2-64	1	6-521 note.
	2-58	104	47-3104.		2-64	2	6-521.
	2-58	105	47-3105.		2-64	3	6-522.
	2-58	106	47-3106.		2-64	4	6-523.
	2-58	201	47-1571a.		2-64	5	6-524.
	2-58	202	47-1574b.		2-64	6	6-525.
	2-58	301	47-3107.		2-64	7	6-526.
	2-58	302	47-3108.		2-64	8	6-527.
	2-58	303	47-3109.		2-64	9	6-528.
	2-58	304	47-3110.		2-64	10	6-529.
	2-58	305	47-3111.		2-64	11	6-530.
	2-58	306	47-3112.		2-64	12	6-531.
	2-58	401	47-3113.		2-64	13	6-532.
	2-58	402	omitted.		2-64	14	omitted.
	2-59	1	2-941 note.	Apr. 6	2-65	1-6	omitted.
	2-59	2	2-941.		2-66	101-505	32-304 note.
	2-59	3	2-942.		2-67	1	2-499 note.
	2-59	4	2-943.		2-67	2	2-499.
	2-59	5	2-944.		2-67	3	2-499.1.
	2-59	6	2-945.		2-67	4	2-499.2.
	2-59	7	2-946.		2-67	5	2-499.3.
	2-59	8	2-947.		2-67	6	2-499.4.
	2-59	9	2-948.		2-67	7	2-499.5.
	2-59	10	2-949.		2-67	8	2-499.6.
	2-59	11	2-950.		2-67	9	2-499.7.
	2-59	12	2-951.		2-67	10	2-499.8.
	2-59	13	2-952.		2-67	11	2-499.9.
	2-59	14	2-953.		2-67	12	2-499.10.
	2-59	15	2-954.		2-67	13	2-499.11.
	2-59	16	2-955.		2-67	14	2-499.12.
	2-59	17	2-956.		2-67	15	2-499.13.
	2-59	18	2-957.		2-67	16	2-499.14.
	2-59	19	2-958.		2-67	17	2-499.15.
	2-59	20	2-959.		2-67	18	2-499.16.
	2-59	21	2-960.		2-67	19	omitted.
	2-59	22	2-961.		2-67	20	2-499.17.
	2-59	23	2-962.		2-67	21	omitted.
	2-59	24	2-963.		2-68	1-3	1-226 note.
	2-59	25	2-911 to 2-931 Rep., 2-964.		2-69	1-3	omitted.
	2-59	26	2-965.		2-69	4	6-502.
	2-60	1	omitted.		2-69	5	40-303.
	2-60	2	40-103.	Apr. 18	2-69	6	omitted.
	2-60	3	omitted.		2-70	1-20	omitted.
	2-61	1	omitted.		2-70	21	2-601, 606, 608, 609.

TABLE 4A.—ACTS OF THE COUNCIL OF THE DISTRICT OF COLUMBIA—Continued

Date	D.C. Law	Section	D.C. Code Supp.	Date	D.C. Law	Section	D.C. Code Supp.
1978				1978			
Apr. 18	2-70	22	omitted.	July 13	2-91	201	47-3302.
	2-71	1-8	omitted.		2-91	202	47-3303.
	2-72	1	omitted.		2-91	203	47-3304.
	2-72	2	1-257.		2-91	204	47-3305.
	2-72	3	47-2305.		2-91	205	47-3306.
	2-72	4	omitted.		2-91	206	47-3307.
	2-73	1	omitted.		2-91	207	47-3308.
	2-73	2	47-1209, 1557 note.		2-91	208	47-3309.
					2-91	209	47-3310.
	2-73	3	25-103, 111, 124.		2-91	210	47-3311.
	2-73	4	omitted.		2-91	211	47-3312.
Apr. 20	2-74	1	6-2301 note.		2-91	301	47-3313.
	2-74	2	6-2301.		2-91	302	47-3314.
	2-74	3	6-2302.		2-91	303	47-3315.
	2-74	4	6-2303.		2-91	304	45-723, 725.
	2-74	5	omitted.		2-91	401	47-3316.
Apr. 28	2-75	1	omitted.		2-91	402	47-3317.
	2-75	2	6-2004, 2006.		2-91	403	47-3318.
	2-75	3	omitted.		2-91	404	47-3319.
May 18	2-76	1	omitted.		2-91	405	47-3320.
	2-76	2, 3	4-823 note.		2-91	406	47-3321.
	2-73	4	omitted.		2-91	407	47-3322.
	2-76	5	4-823 note.		2-91	408	47-3323.
	2-76	6	omitted.		2-91	409	47-3324.
	2-77	1-4	omitted.		2-91	410	47-3325.
June 13	2-78	1	omitted.		2-91	411	47-3326.
	2-78	2	19-316.		2-91	501	47-3327.
	2-78	3	omitted.		2-91	502	47-3328.
	2-79	1-6	omitted.		2-91	503	47-651 Rep.
June 20	2-80	1	omitted.		2-91	504	45-1699.6.
	2-80	2, 3	31-1501 note.		2-91	601	47-3329.
	2-80	4	31-1501a.		2-91	701	omitted.
	2-80	5	31-1501 note.	Aug. 1	2-92	1-8	omitted.
	2-80	6, 7	omitted.		2-93	1-8	omitted.
	2-81	1	5-328 note.		2-94	1-8	omitted.
	2-81	2	5-328.	Aug. 2	2-95	1	omitted.
	2-81	3	5-329.		2-95	2	12-101.
	2-81	4	5-330.		2-95	3	20-1501.
	2-81	5	5-331.		2-95	4	12-101 note, 20-1501 note.
	2-81	6	5-332.				
	2-81	7	5-333.		2-95	5	omitted.
	2-81	8	5-334.		2-96	1	omitted.
	2-81	9	5-335.		2-96	2	31-122.
	2-81	10 to 16	omitted.		2-96	3	omitted.
June 30	2-82	1-3	omitted.	Aug. 12	2-97	1-3	1-226 note.
	2-83	1-8	omitted.	Aug. 17	2-98	1-3	1-226 note.
	2-84	1-8	omitted.		2-99	1-3	1-226 note.
	2-85	1-8	omitted.		2-100	1	4-1001 note.
	2-86	1-8	omitted.		2-100	2	4-1001.
	2-87	1-8	omitted.		2-100	3	4-1002.
	2-88	1-3	47-1207 note.		2-100	4	4-1003.
	2-89	1	omitted.		2-100	5	4-1004.
	2-89	2	32-1320, 1343, 1351.		2-100	6	4-1005.
					2-100	7	4-1006.
	2-89	3	omitted.		2-100	8	4-1007.
	2-90	1-4	1-226 note.		2-100	9	4-1008.
July 13	2-91	100	47-3301 note.		2-100	10	4-1009.
	2-91	101	47-3301.		2-100	11	omitted.

TABLE 4A. — ACTS OF THE COUNCIL OF THE DISTRICT OF COLUMBIA—Continued

Date	D.C. Law	Section	D.C. Code Supp.	Date	D.C. Law	Section	D.C. Code Supp.
1978				1978			
Aug. 18	2-101	1	omitted.	Sept. 12	2-104	601	40-301, 603, 605.
	2-101	2	1-1101, 1103, 1104, 1105, 1107, 1109, 1110, 1111, 1114, 1115.		2-104	602-604	omitted.
					2-104	701	40-1126.
					2-104	702	40-1127.
	2-101	3	1-1121, 1133 to 1136, 1138, 1141, 1151, 1152, 1156, 1161, 1171 to 1173, 1175, 1176, 1181, 1182, 1191.	Sept. 13	2-105	1	omitted.
					2-105	2	7-615.
					2-105	3	7-616.
					2-105	4	omitted.
					2-106	1-5	1-902 note.
					2-107	1	2-2501 note.
					2-107	2	2-2501.
					2-107	3	2-2502.
					2-107	4	2-2503.
					2-107	5	2-2504.
	2-101	4	31-101.		2-107	6	2-2505.
Sept. 9	2-101	5, 6	omitted.		2-107	7	2-2506.
	2-102	1	4-1101 note.		2-107	8	2-2507.
	2-102	2	4-1101.		2-107	9	2-2501 note.
	2-102	3	4-1102.		2-107	10	omitted.
Sept. 12	2-102	4	omitted.	Sept. 22	2-108	1-3	1-226 note.
	2-103	1	45-1801 note.		2-109	1	2-2601 note.
	2-103	2	45-1801.		2-109	2	2-2601.
	2-103	3	45-1802.		2-109	3	2-2602.
	2-103	4	45-1803.		2-109	4	2-2603.
	2-103	5	45-1804.		2-109	5	2-2604.
	2-103	6	45-1805.		2-109	6	Org. Or. 38 rep.
	2-103	7	omitted.		2-109	7	omitted.
	2-104	100	40-1101 note.		2-110	1	omitted.
	2-104	101	40-1101.		2-110	2	5-1202.
	2-104	102	40-1102.	Sept. 23	2-110	3	omitted.
	2-104	103	40-1103.		2-111	1	omitted.
	2-104	104	40-1104.		2-111	2	1-262a, 31-1122.
	2-104	105	40-1105.		2-111	3	31-1721 Rep.
	2-104	106	40-1106.	Sept. 29	2-111	4	omitted.
	2-104	107	40-1107.		2-112	1	32-361 note.
	2-104	108	40-1108.		2-112	2	32-361.
	2-104	201	40-1109.		2-112	3	32-362.
	2-104	202	40-1110.		2-112	4	32-363.
	2-104	203	40-1111.		2-112	5	32-364.
	2-104	204	40-1112.		2-112	6	32-365.
	2-104	205	40-1113.		2-112	7	omitted.
	2-104	206	40-1114.		2-113	1	omitted.
	2-104	301	40-1115.		2-113	2	45-1699.6.
	2-104	302	40-1116.	Sept. 29	2-113	3	omitted.
	2-104	303	40-1117.		2-114	1	47-3201 note.
	2-104	304	40-1118.	Oct. 4	2-114	2	47-3201.
	2-104	305	40-1119.		2-114	3	47-3202.
	2-104	306	40-1120.		2-114	4	47-3203.
	2-104	401	40-1121.		2-114	5	47-3204.
	2-104	402	40-1122.		2-114	6	47-3205.
	2-104	403	40-1123.		2-114	7	47-3206.
	2-104	404	40-1124.		2-114	8	47-3207.
	2-104	405	40-1125.		2-114	9	47-3208.
	2-104	501	40-603.		2-114	10	47-3209.
	2-104	502, 503	omitted.		2-114	11	47-3210.
	2-104	504	40-810.		2-114	12	47-3211.
	2-104	505	40-603.1.		2-114	13	47-3212.

TABLE 4A.— ACTS OF THE COUNCIL OF THE DISTRICT OF COLUMBIA— Continued

Date	D.C. Law	Section	D.C. Code Supp.	Date	D.C. Law	Section	D.C. Code Supp.
1978				1978			
Oct. 4	2-114	14	47-3213.	Oct. 13	2-119	2	47-645.
	2-114	15	47-3214.		2-119	3	47-655.
	2-114	16	47-3215.		2-119	4	47-656.
	2-114	17	47-3216.		2-119	5	47-662.
	2-114	18	47-3217.		2-119	6	omitted.
	2-114	19	omitted.		2-120	1	omitted.
	2-115	1	omitted.		2-120	2, 3	35-701.
	2-115	2	28-3818.		2-120	4	35-703.
	2-115	3	28 appx.		2-120	5	35-705.
	2-115	4, 5	omitted.		2-120	6-8	35-705b.
	2-116	1	omitted.		2-120	9	35-705c, 705d.
	2-116	2	47-801a, 801c, 801f.		2-120	10	35-721.
	2-116	3-5	omitted.		2-120	11	omitted.
Oct 13	2-117	1	omitted.		2-121	1	omitted.
	2-117	2	29-903, 927, 952.		2-121	2	5-732b, 45-1699.6, 1699.19 to 1699.22.
	2-117	3, 4	omitted.		2-121	3	omitted.
	2-118	1-7	omitted.		2-122	1-3	omitted.
	2-119	1	omitted.				

TABLE 7. STATUTES AT LARGE

Volume 92

Date	Page	Pub. L.	Title	Section	D.C. Code Supp.
1978					
June 5	281	95-288	I		47-101 note.
Sept. 8	531	95-355	I		31-1023 note.
Sept. 26	749	95-385			5-704 note.
	750	95-386		1, 2	47-101 note.
	750	95-386		3	47-120-2.
Sept. 27	751	95-387		1	47-341 note.
	751	95-387		2	47-341.
	751	95-387		3	47-342.
	751	95-387		4	47-343.
	753	95-388		1	23-1301.
	753	95-388		2	Tit. 23, ch. 13: subch. I heading, an- alysis, ch. heading, ta- ble of chap- ters.
	753	95-388		3	23-1309.
Oct. 27	2023	95-526		1	1-144, 146, 147, 185 to 187.

TABLE OF CASES

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Adair v. United States, 391 A.2d 288	11-923, 22-502, 22-506, 22-2901, 22-3202	Bethea v. United States, 395 A.2d 787	22-1202, 22-3206
Allen v. United States, 383 A.2d 363	22,105, 22-501, 22-2901, 22-3202, 22-3204, 22-3214, 23-112	Bethel v. Jefferson, 589 F.2d 631	1-131, 1-161, 4-103, 4-121, 4-122, 6-1203, 46-313
Alston v. United States, 383 A.2d 307	22-3204	Blair v. Inter-Ocean Ins. Co., 589 F.2d 730	35-414
Arellano v. District of Columbia Police & Fireman's Retirement & Relief Bd., 384 A.2d 29	1-1510, 4-526, 4-527, 11-722	Bowman v. United States, 385 A.2d 28	22-2901
Association for Preservation of 1700 Block of N St., N.W., & Vicinity v. District of Columbia Bd. of Zoning Adjustment, 384 A.2d 674	1-1510, 5-420	Brady v. Maryland, 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215	14-305, 23-104
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